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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1222nd MEETING

Held at Headquarters, New York,
on Thursday, 1 April 1992, at 10 a.m.

Chairman: Mr. ANDO

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Guinea (CCPR/C/57/Add.2)

1. At the invitation of the Chairman, Mr. Thiam (Guinea) took a place at the Committee table.

2. Mr. THIAM (Guinea) said that the current session was being held at a time when Guinea was involved in a democratization process entailing the establishment of democratic institutions founded on the Basic Law, which had been adopted on 23 December 1990. President Lansana Conté had often expressed his belief that there was a symbiotic relationship between human rights, development and social peace. As an introduction to the second report, he wished to provide certain facts that would place in context the progress achieved since April 1984. That progress would not have been possible if human rights and human freedoms had not been the focus of national concern. After providing a geographical description of Guinea, he went on to discuss the economic context of the second report. On 3 April 1984, Guinea had abandoned a command economic system in favour of free market economy. On 22 December 1985, with the assistance of the World Bank and the International Monetary Fund, it had launched a programme for financial and economic reform, encompassing two phases, 1986-1991 and 1991-1994. During the second phase, it had negotiated a new agreement with regard to the Enhanced Structural Adjustment Facility (ESAF). The reform programme had the following objectives: to lay the groundwork for economic growth through the gradual disengagement of the State from its production and commercial sectors; to promote the private sector by strengthening the juridical and institutional framework; to reduce the average annual inflation rate to approximately 16 per cent in 1991; and to reduce the current account deficit of the balance of payments to 5 per cent of the gross domestic product. In macroeconomic terms, pursuit of those objectives had resulted in real economic growth averaging approximately 4 per cent since 1986 a significant reduction in inflation and a reduction of the balance-of-payments deficit. The ESAF was designed to remove the obstacles to economic growth and financial stability, with a view to consolidating the gains of the reform programme and to achieving the following goals: increasing real economic growth by an average of 4 per cent yearly in the rural sector, reducing the inflation rate to 8 per cent by 1994, and reducing the current account deficit to 8.2 per cent of GDP in 1994 so as to significantly reconstitute government reserves. Those goals would be achieved through the implementation of the following measures: a flexible exchange rate policy, a freeing up of distribution channels, and the correction of price distortions; a cautious credit and debt policy; a policy of restructuring of public enterprises; and the strengthening of Administrative reform; the stabilization of public finance; and regional and subregional cooperation.

3. The principle of political decentralization had been put into practice through the establishment of urban and rural communes with elected councils. The basic principle of multi-party government established in the Basic Law had likewise been implemented. Forty-two parties were competing for political

(Mr. Thaim, Guinea)

power, adhering to the principle of peaceful and loyal opposition. Act L/91/005 of 23 December 1991, concerning freedom of the press and Act L/91/006 of 23 December 1991 creating the National Communications Council, provided for the freedom to express divergent points of view. There were about 20 newspapers, several of which belonged to political parties. A private television station was in the planning stage. A building code had been adopted, transforming property law, and strengthening free enterprise and facilitating access to credit. An investment code had likewise been adopted, furthering the development of the private sector. Act L/91/012 of 23 December 1991, establishing the electoral code, and Act L/91/014, of 23 December 1991, determining eligibility requirements and the system of ineligibilities and incompatibilities, served to create the necessary conditions for the exercise of basic political freedoms. Act L/91/002, of 23 December 1991, set out principles and rules to prevent political competition from descending into anarchy.

4. Guinea believed that democracy could not exist without peaceful opposition, and in accordance with that principle had based its constitutional structure on a multi-party system. The Basic Law had established political competition within a context of equality, freedom of thought, freedom of conscience, freedom of assembly, and freedom of expression. Following fair rules of procedure, it renounced dictatorship and the suppression of the individual by society and the State. Twenty-six years of dictatorship under a single party had amply shown that respect for human rights was not only the first principle of justice but was also the essential basis for the peaceful conduct of political affairs. The failure of totalitarian States and of Guinea in particular, had shown that wherever human rights were violated, development was impossible. Title II of the Basic Law, based on the International Covenants on Human Rights, proclaimed the rights and freedoms of the individual, thus ensuring the free participation of all in the realization of a society whose diversity was its wealth.

Constitutional and legal framework within which the Covenant is implemented: (arts. 2, 3, 4, 23, 24 and 26 of the Covenant) (section I of the list of issues)

5. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Guinea, namely: (a) the extent to which the Covenant had been taken into account in the drafting of the Basic Law; (b) the functions and activities of the National Transition Council with regard to formulating, and submitting for popular consultation, the organizational texts called for in the Basic Law; (c) with reference to paragraph 135, other factors and difficulties that could affect the implementation of the Covenant; (d) with reference to paragraphs 73 and 74, information on any cases in which provisions of the Covenant had been directly invoked before the courts, and the means of resolving contradictions between domestic legislation and the Covenant; (e) the availability to individuals, during states of emergency, of safeguards and effective remedies, and the constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant; (f) progress achieved in establishing a legal framework for national institutions in charge of protecting and promoting human rights, and the nature, activities and status of the "embryonic human rights organizations" mentioned in paragraph 128; (g) current data on the participation of women in the political, economic, social and cultural life of the country, and, in particular, the impact of

(The Chairman)

Guinean culture and traditions on the implementation of human rights, as contained in the Covenant, particularly in articles 3 and 26.

6. Mr. THIAM (Guinea) referring to section I (a), observed that article 5 of the Basic Law was an adaptation of the preamble to the Covenant; the final paragraph of article 19, of the Basic Law was an adaptation of article 1, paragraph 1, of the Covenant; the second paragraph of article 19 was an adaptation of article 1, paragraph 2, of the Covenant; article 8 of the Basic Law was an adaptation of article 2, paragraph 1, of the Covenant and also corresponded to article 3; article 9 of the Basic Law was an adaptation of article 2, paragraph 3 (a) of the Covenant; article 74 of the Basic Law corresponded to article 4 of the Covenant. Organization Act L/96, concerning states of siege and states of emergency, specified that those measures could be invoked only during grave disturbances of public order where domestic security was endangered. It also stated that no person could be subject to restrictive residence or local expulsion. Anyone subjected to those measures had the right to appeal to an advisory body presided over by a judge. Organization Act L/96 corresponded to article 5 of the Covenant; articles 6, 7, 8, 9, 10, 11, 12, 14 and 15 of that Act defined the powers of the government during states of emergency. Articles 16, 17, and 18 of the Act vested the powers enumerated in articles 3 to 13 in the military authorities during states of siege. Article 23 declared that states of siege and emergency could not exceed a duration of 12 days, as prescribed by article 74 of the Basic Law.

7. With regard to section I (b) the National Transition Council was vested with legislative powers under article 92 of the Basic Law. Article 94 provided that the Council would establish laws to further the development of institutions and the functioning of the Government. In the interim, the Council was empowered to take what measures it deemed necessary to protect the lives and liberty of citizens.

8. With regard to section I (c), taking as an example the implementation of article 10 of the Covenant, Guinea was suffering from a shortage of financial resources and was unable to provide the required "minimum conditions", such as, for instance, the separation of juveniles and adults, or of accused and convicted persons. The prisons were in a state of total disrepair and certain standards could not be met, notably with regard to women and minorities. The meagre resources obtained from structural adjustment measures were, as prescribed by the donors, directed towards the production sector. Penal laws had been enacted to benefit juveniles, but there were no rehabilitation centres to facilitate the reassimilation of juvenile delinquents into society. Taking as another example the implementation of article 14 (3) (b) of the Covenant, virtually all arrested persons were so poor as to require court-appointed counsel, but all the lawyers were in Conakry. A session of the assize court at Labé had recently been postponed because the court-appointed counsel had not arrived; his transportation costs had not been paid. The budget imposed under structural adjustment did not provide for expenses of that sort.

9. With regard to section I (d) in Guinean law, no discrepancy was permissible between the rules of domestic and international law. Article 79 of the Basic Law provided for the supremacy of the latter; when a discrepancy arose, the

(Mr. Thiam, Guinea)

domestic law would be modified. The question raised in section I (e), had been addressed earlier.

10. With regard to section I (f), Decree No. 92/207 of the Ministry of the Interior and Defence, dated 11 May 1992, authorized the establishment of the Guinean Association for Human Rights, an organization which was multi-dimensional, independent and apolitical; its goals and strategy were set out in articles 3, 4 and 5 of the decree. During the second half of 1992, the Association had undertaken a number of modest actions and had nevertheless achieved appreciable results.

11. Concerning section I (g), women held positions equal to those of men at all levels of national administration. Of the 17 members of the Government, 3 were women, and 3 of the 7 members of the National Transition Council were women. There was a woman leader of a political party and a woman mayor. A woman was public prosecutor for one of the two appeals courts in Guinea. There were active associations of businesswomen and of women who were heads of organizations. Women played roles of primary importance, both in the countryside and in the cities. In cooperation with donors, the Government had promoted women's cooperatives in all areas of production. Furthermore, many non-governmental organizations had invested in the promotion of small- and medium-sized collective businesses run by women.

12. Mr. NDIAYE said that serious efforts were clearly being made in Guinea to establish a State under the rule of law. Perhaps, however, because of the administrative upheavals involved in the transitional period, the second periodic report of Guinea did not follow the Committee guidelines regarding the form and content of reports, which should not only give the general framework within which the civil and political rights recognized by the Covenant were protected in the reporting State but should also contain information in relation to each provision of the individual articles of the Covenant. Nevertheless, he found the report to be a very honest one, particularly paragraphs 106, 113, 118, 132 and 135.

13. While all States needed to be in a sense personified in a leader, the "personalized" power of the President of Guinea (para. 38 of the report) was another matter, especially coming on the heels of a dictatorship. The excessive personalization of the State was a common problem of African countries. Since the Government of Guinea had determined that it would champion human rights, it should establish full legal controls while involving as many people as possible in the exercise of power. He was not at all convinced that the legitimacy of the presidency precluded any possibility of contesting presidential decisions, as maintained in the report (para. 39). A democratic system of checks and balances required opposition, organized constitutionally. The opposition parties in the National Assembly should, for instance, be able to contest some of the President's decisions according to pre-established mechanisms. It was a dangerous thing to hold authority sacred.

14. The political regime described in paragraph 44 of the report was unclear: under what circumstances would Parliament be dissolved, how soon would new elections be held, and what would be the procedure for constituting a new legislature?

(Mr. Ndiaye)

15. One should be wary of using a referendum as an easy political option, since that risked turning a representative democracy - composed of persons of experience and technical knowledge able better to understand the spirit of the laws being proposed - into a government by plebiscite. He found the report (para. 48) overly optimistic regarding that option.

16. In general, he would like more detailed information on the mechanisms outlined in paragraphs 49 to 52 of the report, which were meant to illustrate how presidential power was limited. The alternatives described in paragraph 49, for instance, seemed to offer the choice between a legislature that had no autonomous existence and a President compelled to resign, thus opening the door to a political crisis whose resolution was unclear. None of the provisions so schematically outlined seemed calculated to allay, reduce or settle constitutional crises, as claimed in the report (para. 51). The President's power to dissolve the National Assembly undermined everything else, and what came through in the report was a presidential regime with a great deal of power.

17. In addition, empowering the Supreme Court to give an opinion on the dissolution of the National Assembly (para. 60 of the report) gave the judiciary a most unusual degree of political control. Altogether, clarification was needed on the kind of regime the Government was trying to set up.

18. Miss CHANET, welcoming the clear evolution in Guinea towards democratic institutions, especially since the adoption of the Basic Law in 1990 and the restoration of a multi-party system, said that she agreed with Mr. Ndiaye's criticisms of the report. A mere five lines had been devoted, for instance, to articles 6 to 10 of the Covenant, and the report was silent on the practical implementation of the Covenant in Guinea. Detailed information should always be provided in the report itself, not in an oral introduction.

19. She also agreed with Mr. Ndiaye on the question of presidential power. While all States were free to choose the kind of political system they wished, a constitutional framework that did not favour the Covenant could have repercussions on human rights. Guinea did not even have a Prime Minister to share the powers of the executive branch; the National Assembly could not dismiss the President, but the President had the use of the referendum, the veto and control over the agenda of the National Assembly, thus in effect leaving it virtually powerless. The most effective guarantee would in her view be the election of a president by universal suffrage, and for a five year, non-renewable term. There was obviously concern in Guinea itself regarding what the report (para. 125) described as the "absolute power" of the executive, which had led to the establishment of the National Transition Council. However, after the transitional period, the executive would presumably once again be subject to no checks or balances by either the legislative or judicial branches.

20. With respect to the judiciary, the sole authority under the Basic Law was the Supreme Council of Justice (art. 81) presided over, again, by the President of the Republic. She wondered what was meant in that same article by the irremovability of magistrates "under conditions set by law", which seemed to be a contradiction in terms.

(Miss Chanet)

21. In its guarantee of fundamental rights, the Basic Law seemed to have taken the articles of the Covenant into consideration only by half: for example, article 9 of the Basic Law, corresponding to article 9 of the Covenant, failed to use the same wording; article 10 of the Basic Law gave citizens alone the right to demonstrate. The article of the Basic Law which seemed to her most dangerous and least in accord with the Covenant, however, was article 22, the second paragraph of which seemed to sanction abrogation of any right in the name of public order, a notion to which the Covenant in article 19 (paras. 1 and 2) set very specific limits.

22. The right of recourse set out in article 9 of the Basic Law and described in paragraph 77 of the report seemed useful, but she would like more information on how it was ensured in practice. She found nothing in the Basic Law regarding the State Security Court and the military courts and wondered if there was any organization act pending before the Parliament intended to modify either of those two courts of special jurisdiction.

23. Lastly, she asked whether Guinea intended to maintain its reservation to article 48 (1) of the Covenant and whether it planned to sign the Optional Protocol.

24. Mr. EL-SHAFEI observed that the report did not give the Committee a clear understanding of the relationship between the three branches of government. He would also like more information about the National Transition Council; its role, its composition, whether its members were appointed or elected, whether it had a legislative function and, if so, its scope. It was difficult to see how the Council's role related to that of the National Assembly. He agreed that too much power rested in the hands of the executive and wondered if that would be the case only during the transitional phase. As to the judiciary, more information was, again, needed on who appointed the judges and what the role of the judiciary was in the separation of powers.

25. The Basic Law (art. 3, last paragraph) did not specify how a multi-party system would actually work. He would appreciate more information as to which authority determined the establishment of a party, whether any parties had been established, and whether there were any plans for legislative elections.

26. Mr. SADI said that the Government, while clearly well-intentioned, had submitted very scant information in its report. The status of the Covenant was unclear: while paragraph 73 of the report stated sweepingly that any individual might invoke the international human rights instruments, which were an integral part of Guinean domestic law, information was needed on the provisions of any organization acts or other legislation that made that possible, and also some reference to precedents. He would also like more specific information concerning paragraph 75 of the report, referring to article 1 of the Covenant, and paragraph 79, referring to article 4 and the state of emergency. The extent of the derogation in article 74 of the Basic Law was unclear, and he also wondered whether there were any provisions stipulating that the Secretary-General of the United Nations should be informed prior to the proclamation of a state of emergency. Too little information had been provided on marriage and the family under article 23 of the Covenant; paragraph 94 of the report seemed to imply that infanticide was a serious problem in the country.

(Mr. Sadi)

Regarding article 26 of the Covenant, it was his impression from paragraph 99 of the report that the Basic Law prohibited acts of racial, ethnic or religious discrimination not per se but because they endangered national unity or State security.

27. In view of the grave human rights violations that had occurred in Guinea before 1984 under the dictatorship, he asked if any provision had been made to investigate those crimes and to hold the perpetrators accountable, and whether any kind of amnesty had been considered or declared.

28. Mr. MAVROMMATIS said it was a great pleasure to see a developing country that was facing economic problems taking steps towards democracy. The periodic report of Guinea was permeated by references to its Basic Law, yet little information was included on the practical application of Covenant articles. However, the discussion of factors and difficulties and the problems being faced was most welcome.

29. He asked why Guinea had opted for the Basic Law instead of a constitution, since a basic law had a temporary or transitional connotation. It would be helpful if the provisions permitting and encouraging the creation of political parties could be identified. He would like to know more about the restrictions on regionalism and tribalism in article 4 of the Basic Law, which did not appear to be permissible under the Covenant. Political opinion, colour, national origin, property and birth, which were mentioned in article 26 of the Covenant, had been omitted as grounds for discrimination in the Basic Law, and he wondered if there was any intention to add them in order to bring it in line with the Covenant.

30. Articles 11, 16, 20 and 27 of the Covenant had not been mentioned in the report, and in view of the recent changes, more information on the implementation of those articles would be welcome. He asked whether mandatory voting was the mechanism for ensuring popular participation in elections. The questions relating to the position of the Covenant in domestic law had not been answered clearly. If the Covenant was indeed supreme, he wondered whether it had been invoked before the courts and if it could be invoked directly.

31. Mr. BRUNI CELLI, referring to the embryonic human rights organizations mentioned in paragraph 128 of the report, asked whether the Government planned to establish an independent national human rights organization, whether non-governmental and international human rights organizations operated in Guinea, and whether the Government had any relationship with the African Commission on Human and Peoples' Rights. The political rights of women had been mentioned in the report, but he would like to hear more about their civil rights in matters such as property, divorce and family law.

32. Although Guinea had ratified the Covenant 15 years earlier, it had not yet ratified the Optional Protocol, and information concerning any legal or other restrictions on its ratification would be welcome.

(Mr. Bruni Celli)

33. A more detailed explanation of the specific legislative duties of the National Transition Council and the National Assembly and the jurisdiction of each body, whether separate or concurrent, was needed. Lastly, he inquired whether the Basic Law would be changed if a contradiction was found between that law and the Covenant.

34. Mr. FODOR said that the second periodic report of Guinea showed a great improvement over the first, but still did not entirely meet the Committee's guidelines, especially those regarding information on implementation of the Covenant.

35. The separation of powers as embodied in the Basic Law defined the competence of the National Assembly and the President. It was evident that the National Assembly was weak in comparison with a strong President, who even had a legislative role. According to paragraph 60 of the report, the Supreme Court would rule in cases of conflict between the National Assembly and the President. It would be interesting to learn whether the Supreme Court had heard any such cases, and whether the National Assembly had any role in the ratification of international treaties, or whether that was the exclusive competence of the President.

36. Turning to paragraph 8 of the report, he inquired why language was not included among the unlawful grounds for discrimination. In paragraph 10, it was stated that suffrage was universal for all citizens if they had not been deprived of their civil and political rights. Information should be provided about groups who could be so deprived, the grounds for such deprivation and the applicable procedures.

37. With reference to paragraph 33, he asked if an amendment adopted during a state of emergency would automatically be invalidated by the Basic Law without any further procedure, or if a special procedure was applied. If so, that procedure should be further clarified. If he understood paragraph 64 correctly, in the event that a conflict was discovered between the Covenant and the Basic Law, the Basic Law would be changed. That being the case, he asked if any amendments to the Basic Law had been made because of discrepancies with the Covenant.

38. More information was needed regarding the structure of the judiciary, the appellate courts and the competence of the Supreme Court and the High Court of Justice. If the latter was a special court, it was difficult to see how it harmonized with the principles of equality before the law.

39. Regarding the legislative and constitutional referendums mentioned in paragraph 44, it would be interesting to know how many had been held since the adoption of the Basic Law and their practical and financial implications, given the economic difficulties the country faced, since such an exercise was usually costly.

40. Mrs. EVATT inquired what measures had been taken to disseminate information about the Covenant, and whether local non-governmental organizations had been consulted in the preparation of the report. An imbalance of powers, rather than a separation of powers, might more aptly describe the current situation, since power was apparently concentrated in the executive. The relationship between the executive and legislative branches of government needed further clarification. Empowering the Supreme Court to give an opinion on the holding of a referendum or the dissolution of the National Assembly (para. 60) entailed the danger of involving the judiciary in a political process. Clarification of the process of appointing judges and a more detailed description of the High Court of Justice and the process whereby its judges were appointed were also needed.

41. The straightforward manner in which the report discussed the difficulties faced was commendable. She asked what measures were in place or planned in order to overcome those difficulties, whether citizens were aware of their rights, whether those rights could be and were invoked freely in practice, and whether an independent national institution would be established to provide citizens with recourse when their rights were abused.

42. Women had equal rights as a matter of law, but if they were to participate in society on equal terms, they first required equal access to education. The literacy rate and rate of access to primary and secondary education for women were far below those of men. Their equality in the family must be clearly established as well. She would like to know whether attention was being paid to overcoming the obstacles posed by traditional attitudes towards women and practices such as excision.

43. Mr. PRADO VALLEJO said that the delegation's introduction of the report had been helpful in making up for that document's inadequacies, but information was still lacking on systems for the practice of human rights and means of recourse. He would be interested to learn what legislation for the protection of human rights currently existed. The description of the presidential regime in paragraphs 37 and 38 of the report raised some concerns and required clarification. Paragraph 39 stated that the Basic Law precluded any possibility of the President's power of decision being contested. It would be important to know what limits were placed on presidential power, and what the excessive powers mentioned in paragraph 50 might be. It was difficult to protect human rights in a situation in which unrestricted power over all areas of national life was concentrated in one person.

44. The Committee was also concerned about the existence of military courts and the State Security Court, whose trials were conducted in secret. The Covenant specifically provided for public trials and it was difficult to see how the human rights of citizens could be protected under such conditions.

45. The report had candidly acknowledged the serious problems which Guinea faced in ensuring respect for human rights. In that connection, the Committee would welcome additional information on the progress made in that area, as alluded to in paragraph 102 of the report. It would also be useful to have further clarification about the reported resignation of victims to the violation of their human rights (para. 135 (a)).

(Mr. Prado Vallejo)

46. Paragraph 107 of the report stated that, thanks to the independent efforts of the legal profession, the time-limits on preventive detention were increasingly being respected. The proper role of the legal profession, however, was to help those arrested and it was for the Government to ensure the protection of the human rights of Guinean citizens through the legal system.

47. The information contained in paragraph 132 of the report concerning the status of women in Guinea was also very disturbing to the Committee. On the whole, the human rights situation in the country was far from satisfactory and urgent steps must be taken to bring about improvements.

48. Mr. LALLAH, while congratulating the delegation of Guinea on its honest and frank responses to the questions thus far raised, said that, in certain respects, the report was inadequate, particularly with respect to the mechanisms for the implementation of the Basic Law, the promulgation of which was a step in the direction of more effective protection of human rights in Guinea. The report contained little information on the jurisdiction and procedures of the military courts and he would welcome any additional information on that subject. With regard to the state of exception, it would be useful to know whether it could be extended, and if so, for what length of time and under what circumstances. In that connection, he found it unusual that the judiciary should have given advance approval for the restrictions imposed under the state of exception. He wanted to know what the role of the judiciary was in practice and what mechanisms were in place to guarantee its independence. He also wanted precise details of the respective jurisdictions of the military and civilian courts and on the modalities for resolving conflicts between them. It would be particularly useful to have clarification of the "limited referral" (para. 63) to which the action of the Supreme Court was subjected.

49. Mr. WENNERGREN said that the report provided a good example of a country that was progressing along the path to democracy and the rule of law. The Basic Law, whose provisions were important for the future of the country, proposed solutions which, while unusual, were in keeping with the traditions of Guinea. He understood that the Basic Law was not yet fully in force and that a transitional council would act as the legislature during a five-year period of transition. It would be helpful if the Committee were given an idea of the current situation in that regard and of the extent to which the Basic Law had thus far been implemented.

50. He recalled that, during the consideration of the previous periodic report of Guinea, the delegation of that country had undertaken to review the operations of the State Security Court, whose decisions were not subject to appeal as provided for in the Covenant. He wished to know the results of that review.

51. With regard to the dissemination of information concerning the Basic Law and human rights, he noted that two human rights seminars had been held in Guinea in 1988 and 1989, respectively, (para. 134) and that a number of human rights instruments had been translated into national languages or transcribed into songs. The Committee would welcome information on the specific topics discussed at the seminars and would like to know whether the programme of translation and transcription was still being pursued.

(Mr. Wennergren)

52. He noted the reference in paragraph 14 of the report to a State subject to the rule of law in which each individual respected the law and the rights of others and took part in the construction of a more equitable and more prosperous society. He wished to point out, however, that the authorities, and in particular the executive branch, must also respect the law. In that connection, it would be helpful to know what rules of law had been enacted to ensure that the executive branch did indeed respect the law and the decisions of the courts.

53. Mr. HERNDL said he was gratified to read in paragraph 136 of the report that the authorities' objective was to establish a genuine culture of human rights in Guinea and that there was a new light in the Guinean sky. He took that declaration as a pledge of commitment to the protection of human rights.

54. He was particularly interested in the place of international law and international treaties in the legal system of Guinea. In that connection he would welcome additional information on the practical application of articles 78 and 79 of the Basic Law.

55. On the question of the dissemination of human rights instruments, he noted that the Universal Declaration of Human Rights had been translated into the national languages (para. 135 (b)). He wanted to know into which national languages it had been translated and what follow-up there had been to the human rights seminars referred to in the same paragraph.

56. He would welcome additional information on the role of the Supreme Court in the review of legislation and in the application of international treaties. It would be particularly useful to have clarification of the legal consequences of the Court's opinions and of the role of the Court in the dissolution of the National Assembly and the holding of referendums (para. 60).

57. Lastly, he wanted to know the modalities whereby individuals could invoke the protection provided by international instruments and whether national authorities, including the courts, were required to apply the provisions of such instruments.

The meeting rose at 1 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1223rd MEETING

Held at Headquarters, New York,
on Thursday, 1 April 1993, at 3 p.m.

Chairman: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Guinea (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a corrigendum, to be issued shortly after the end of this session.

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Guinea (continued) (CCPR/C/57/Add.2)

1. At the invitation of the Chairman, Mr. Thiam (Guinea) took a place at the Committee table.

2. The CHAIRMAN invited the Committee to resume its questioning of the Guinean delegation in connection with section I of the list of issues.

3. Mr. POCAR noted that, although article 22 of the Basic Law of Guinea, guaranteed all persons the exercise of fundamental rights and freedoms, the second paragraph of that article went on to stipulate that the law could set limits on such rights and freedoms only when such limits were essential for maintaining public order and safeguarding democracy. However, the Covenant did not provide for any limits on the rights and freedoms that it guaranteed.

4. The Committee had been informed that the Covenant took precedence over ordinary law in Guinea, and he wished to know how the superior status of the Covenant over the law was reflected in practice. Could a judge prevent the application of a law that limited rights and freedoms by directly invoking the Covenant, or was there some other machinery or procedure to ensure the primacy of the Covenant over ordinary law?

5. Mr. DIMITRIJEVIĆ, while welcoming the progress that had been achieved and that was described in part III, section B, of the report, said that it would have been more useful if those comments, instead of being put in a separate section had been combined with the observations in section A regarding specific articles of the Covenant. Moreover, while Guinea provided information about the various difficulties it had encountered in its efforts to guarantee civil and political rights, it did not state what it was doing to overcome them.

6. He wished to know what Guinea was doing about the serious human rights abuses that had occurred under the former authoritarian Government. While the Government had proclaimed several amnesties for political offences, it had not taken any measures to bring perpetrators of grave human rights violations to justice. In that regard, he wondered whether there was a policy of national reconciliation that provided compensation to victims of such violations.

7. Regarding the second paragraph of article 22 of the Basic Law he said that it would be more prudent to specify which rights could be limited; moreover, the Constitution and jurisprudence should make it clear that such rights could not be modified or limited by the legislator.

8. Mr. FRANCIS said that, while he was aware that the Government of Guinea was in a period of transition, it was not advisable to overconcentrate powers in the President of the Republic. That was bound to lead to abuses in the exercise of power.

(Mr. Francis)

9. In so far as the judges of the Supreme Court were called upon to give an opinion on the referendum and the dissolution of the National Assembly, they would be exposed to a conflict of interests, since they were being asked to rule on matters in which they had a judicial interest in the past. He inquired whether Guinea had a system of independent legal offices responsible for giving advice to the executive branch regarding such matters as the referendum and the dissolution of the National Assembly. It would be preferable if such legal offices provided all legal advice to the executive, in order not to burden the Supreme Court with such a great responsibility.

10. According to paragraph 64 of its second periodic report, Guinea accepted the primacy of international law over domestic law. That meant that, once ratified, the Covenant took precedence over domestic law in matters relating to Guinea's obligations under the Covenant. However, the notion of reciprocity was disturbing. The Government of Guinea should consider how its reservation regarding reciprocity affected its obligations under the Covenant, and should review that aspect of its policy within the shortest possible time.

11. Mr. THIAM (Guinea) thanked the members of the Committee for their keen interest in the second periodic report of Guinea and for their questions and observations. Guinea hoped to continue its cooperation with the Committee, in particular through the organization of a seminar in Guinea in order to stimulate interest in human rights.

12. Several members of the Committee had commented that the second periodic report had not been properly drafted. Guinea had been unsure whether it should answer the questions raised during the consideration of its initial report or provide information in the context of the new legal framework and that had led it to diverge somewhat from the Committee's guidelines. Moreover, the situation in Guinea had changed since 1991, when the second periodic report had been prepared.

13. Questions had been raised about the authority of the President of the Republic. The President did not have absolute power in so far as he had to cooperate with the legislative and judiciary branches. However, it was considered necessary for him to enjoy a certain freedom of movement and not be subject to certain impediments. Members of the Committee who came from developing countries knew very well that, when the authority of the President, a minister or even a director was open to question, no one would negotiate with him. While Guinea did not wish to create a tyrant, it considered that the President should be given the necessary authority to negotiate.

14. The President of the Republic was obliged to reply to oral and written questions from the National Assembly. Moreover, the Basic Law permitted the National Assembly to establish commissions of inquiry on matters that required clarification. The President could not, therefore, take a decision and apply it fully without being accountable to the National Assembly.

15. The Supreme Court was responsible for monitoring the legality of acts of the executive branch. The latter could act only within the confines of the law, and all laws must be in keeping with the Constitution. The Basic Law provided for cases in which the legislative and the executive branches might not agree on

(Mr. Thiam, Guinea)

a specific issue. Under the Basic Law, the President of the Republic either accepted the National Assembly's views or jeopardized his own term of office. If he dissolved the Assembly because he did not agree with it, and if the same Assembly was re-elected, the President was obliged to resign.

16. The National Transition Council and the National Assembly were two distinct bodies; they did not exist simultaneously. The National Transition Council would continue to function until the National Assembly was elected, at which time it would automatically cease to exist. Under the Basic Law, the members of the National Transition Council were appointed by the President of the Republic, and their sole task was to prepare the organic laws that were required for the establishment of the main institutions of the Guinean State. Such laws dealt with the charter of political parties, the change in the number of parties, the composition and functions of the Economic and Social Council, the freedom of the press, the budget for 1992-1993, and the attributes and functions of the Supreme Court and the High Court of Justice.

17. Replying to a question on the role of the referendum, he said that it could be used both by the legislature against the executive and by the executive against the legislature. With respect to the ratification of presidential acts by the National Assembly, he explained that article 67 of the Basic Law defined the areas in which the President had authority to take action, including foreign affairs and finance, but also provided a means by which the National Assembly could monitor his actions.

18. Turning to the judicial system, he said that article 80 of the Basic Law made provision for a completely independent judiciary. Under the Law, the Supreme Court functioned as a means of recourse against both executive and legislative acts as well as a court of appeals. Because it was required to rule on the constitutionality of presidential decrees, it served both to ensure their constitutionality and to make it known to the nation that the President was acting constitutionally. The Supreme Court also adjudicated questions of jurisdiction between the various parts of the judicial system and was the highest court of appeal. No provision had been made for recourse against its decisions as it was itself the last level of recourse.

19. Both the State Security Court and the military courts had ceased to exist with the promulgation of the Basic Law.

20. Guinea had as yet no jurisprudence on the separation of powers because its new system had not yet been fully implemented. The structure of the judiciary had, however, been defined by law. It provided for the nomination of judges by the Ministry of Justice and their approval by the Supreme Council. No judge could be removed or transferred without his prior agreement except in cases of extreme emergency, when the Supreme Council was empowered to take such action.

21. On the matter of political parties, he said that the new Government had originally intended to begin with a two-party system. However, that had prompted so much criticism that it had decided to adopt the multi-party system envisaged under article 2 of the Basic Law; there were now 42 parties in existence. Those parties were required to submit their statutes to the Ministry

(Mr. Thiam, Guinea)

of the Interior, which reviewed them for constitutionality and then issued a notice that the party had been formed.

22. With regard to the question concerning popular participation in public life, he noted that under the Basic Law it was the duty of all citizens to participate in elections, the only restrictions being those relating to age and those resulting from conviction of an offence involving the loss of civil rights. On the connection between the Basic Law and the Covenant, he said that the intent of article 2 of the Basic Law was to ensure that no limitations were imposed on individual freedoms except those essential to public order. Even that reservation was not open-ended, however, as article 2, paragraph 5, specified that certain rights were inalienable.

23. The legislative elections, which had been scheduled to be held at the beginning of 1991, had been delayed because of a disagreement about how the printing of ballots was to be financed. They would be held as soon as the matter was finally resolved. Guinea had now ratified the Optional Protocol; it was preparing a Code of Family Law, which would, inter alia, cover questions relating to the dowry system. An effort was being made to reduce the obligation to pay dowry to a symbolic level, but the question was a difficult one because tradition and the authority of the family remained very powerful forces in Guinean society. Efforts were being made to modify those forces through education rather than legislation, not only with regard to the dowry system but in other areas such as those of female circumcision and polygamy. On the matter of divorce, he said that divorce proceedings could be initiated by either party; traditionally, however, the families were also involved, and they usually tried to preserve the marriage. If that proved impossible, however, the divorce took place. Infanticide, could be a criminal offence; however, where it had been carried out involuntarily, it was a lesser offence. Imprisonment, for any violation of civil law, including for debt, was illegal. The practice still existed in some rural areas, however, and was difficult to eliminate because some debtors acquiesced in the system and did not bring a complaint.

24. The report had been criticized for omitting any reference to the question of discrimination on grounds of race, language or colour, but the fact was that no distinctions on those grounds existed in Guinea, and all forms of discrimination were prohibited. The only distinctions made in the country were those relating to ethnic background. There had been a kind of spontaneous emergence of ethnocentricity in the country as a result of the democratization process, and some of the new political parties reflected that fact. Although that ethnocentricity was not so much a matter of discrimination as a search on the part of some elements of the population for a basis for solidarity, it did create problems.

25. Turning to the question of human rights organizations, he said that a proper legal framework was needed to guarantee their existence and operation. However, because of delays in drawing up legislation, the President of the Republic had authorized the Ministry of the Interior to grant recognition to properly constituted organizations. A Guinean human rights association now existed and was very active in the field.

Right to life, treatment of prisoners and other detainees, liberty and security of the person (articles 6, 7, 9 and 10 of the Covenant) (section II of the list of issues)

26. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Guinea, namely: (a) details of the offences punishable by the death penalty and whether abolition of the death penalty had been envisaged; (b) frequency with which the death penalty had been imposed and carried out since consideration of the initial report and the offences concerned; (c) violations of the rules and regulations governing use of firearms by police and security forces and measures to prevent their recurrence; clarification of the circumstances leading to the deaths mentioned in paragraph 117 of the report; (d) information concerning investigations of disappearances which occurred before 1988; (e) details of complaints concerning extrajudicial executions or torture and measures to investigate and punish those responsible and prevent the recurrence of such acts; (f) information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; (g) information on the infant mortality rate and progress made in that field; (h) informing families of detainees of their arrest and providing access to a lawyer; (i) difficulties in observing the maximum legal period of detention in custody and of pre-trial detention.

27. Mr. THIAM (Guinea) said that the death penalty was imposed for murder, crimes against the external security of the State, illegal use of armed force, fomenting civil war, looting, and the use of torture or other barbaric acts while committing a crime. Guinea was a country with a Muslim majority and no consideration was being given to the abolition of the death penalty at the present time. Since the consideration of the initial report, only one death sentence had been handed down and none had been carried out.

28. With regard to the deaths referred to in paragraph 117 of the report, one person had been run over by a truck as a result of his own carelessness, while two others had died during struggles between rival groups of students. A young woman of 17 had also been killed when the crowd reacted violently after seeing her in the company of a foreigner.

29. It had not seemed appropriate to conduct investigations into disappearances since those responsible were now dead and it was thought unwise to reopen old wounds which might jeopardize the process of national reconciliation. Certain political parties had called for a national conference to be held on the subject, but the authorities had preferred to grant pardons.

30. With regard to the arrangements for the supervision of places of detention, a department for the administration of prisons consisting solely of magistrates had been set up within the Ministry of Justice and was responsible for ensuring that the relevant legal provisions were properly applied in prisons.

31. He was unable to provide figures on the infant mortality rate, but did point out that the overall mortality rate and the maternal mortality rate had fallen sharply since 1984, while the number of primary health care centres had increased substantially.

(Mr. Thiam, Guinea)

32. When an individual was arrested the family was always informed immediately, and the administrative authorities were required by law to inform local communities. Under existing law, access to a lawyer was required only in the office of the examining magistrate who was required to inform persons in custody of all their rights. Difficulties did arise in observing the maximum legal period of detention in custody, usually in remote rural areas because of the lack of communication infrastructures.

Right to a fair trial (article 14 of the Covenant) (section III of the list of issues)

33. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Guinea, namely: (a) guarantees for the independence and impartiality of the judiciary; (b) information on the composition and jurisdiction of the State Security Court and the military courts, including details of cases considered by those courts; (c) information on the implementation of the right to a public trial provided for in article 14, paragraph 1, of the Covenant.

34. Mr. THIAM (Guinea) said that the independence and impartiality of the judiciary were guaranteed by Act No. 91/011, which provided for the irremovability of judges and for a special body to supervise their appointment and recruitment. Article 80 of the Basic Law enshrined the principle of the independence of the judiciary, while article 81 stipulated that judges were subject only to the authority of the law in the performance of their duties.

35. The State Security Court had been abolished and replaced by the High Court of Justice, which consisted of members elected by the National Assembly under the presidency of a judge. Military courts no longer existed in Guinea. All trials were open and accessible to the public and were held during legal working hours. At least 48 hours advance notice was required.

Freedom of movement and expulsion of aliens, right to privacy, freedom of opinion and expression, freedom of association and assembly, and right of persons belonging to minorities (articles 12, 13, 17, 19, 21, 22 and 27 of the Covenant) (section IV of the list of issues)

36. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of Guinea, namely: (a) legal provisions governing the expulsion of aliens and the question of whether appeals against expulsion orders had suspensive effect; (b) information on the result of legal proceedings initiated in cases of arbitrary interference with the privacy of individuals or families, or with their correspondence; (c) information on laws or regulations governing the recognition of religions or religious sects by public authorities, with particular reference to measures taken against the emergence of certain sects whose fundamentalists views appeared likely to threaten public order and social peace; (d) information and examples relating to restrictions imposed by articles 244 to 266 of the Penal Code on the freedom of opinion and expression; (e) information on measures taken by the authorities to ensure plurality of press organs; (f) explanation of criteria and procedures for the registration of political parties and trade unions, including measures to facilitate the

(The Chairman)

establishment of political parties and to secure political pluralism;
(g) details of ethnic, religious or linguistic minorities existing in the Republic of Guinea and measures to protect the rights of persons belonging to ethnic, religious or cultural minorities, including information on the events affecting relations between ethnic groups mentioned in paragraph 129 of the report.

37. Mr. THIAM (Guinea) said that orders for the expulsion of aliens were issued by the Minister of the Interior. Appeals against an expulsion order were permissible and did have suspensive effect. There were no laws governing the recognition of religions or religious sects by public authorities and there was absolute freedom in that field. Articles 174 to 177 of the Penal Code dealt with the possible threat to public order posed by the activities of ministers of religious sects.

38. Freedom of opinion and expression was regulated by articles 244 to 266 of the Penal Code. Under article 254, all written publications and other printed matter were required to bear the name, profession and address of the author or printer. That was intended as a guarantee of probity and to ensure that the author's identity was known if defamatory or prejudicial remarks were published. Article 256 prohibited publications whose aim was to incite to crime, while article 258 prohibited the publication of pornographic material.

39. Freedom of the press and other sectors of the media was guaranteed by Act No. 91/005, the only restrictions imposed being those needed to protect the dignity of the person, ensure plurality of opinion and safeguard public order and national unity. The law gave all citizens the right to set up, own and operate newspapers, publications, radio and television stations, and any organ intended for the promotion and dissemination of ideas and opinions. Provision also existed for the right of reply and for sanctions against abuses by the press such as incitement, obscenity and libel. There was a flourishing press sector with some 20 different publications.

40. The registration of political parties was governed by Act No. 91/002, which contained no limitations on or obstacles to the establishment of political parties. All political parties were required to apply for an administrative authorization. Applications had to be processed by a certain deadline; if the authorization was denied reasons must be given. Appeals against a refusal could be lodged with the Supreme Court. All the legally constituted political parties had equal access to State-owned information media.

41. While there were many different ethnic groups in Guinea, extensive intermarriage had made the country a melting pot where no minority feared for its survival. For that reason, there was little need to provide for protective measures and article 8 of the Basic Law was deemed to be sufficient for that purpose. Some problems had occurred in the past when the crimes of the former regime were attributed to the Malinké group, because the former President had been of that ethnic origin. For similar reasons, the Susu group tended to be blamed for the real or alleged failings of the current authorities. However, he was glad to say that ethnic rivalry was giving way to national sentiment.

42. The CHAIRMAN invited members of the Committee to ask questions relating to sections II, III and IV of the list of issues.

43. Mr. WENNERGREN said that he would welcome an explanation of the contradiction between the continuing existence of the death penalty in Guinea and the provisions of articles 5 and 6 of the Basic Law, which asserted that the right to life was absolute. He noted that the State Security Court had been replaced by the High Court of Justice, whose members were supposed to be elected by the National Assembly. However, no elections had been held and the National Assembly did not yet exist. He therefore wondered whether the members of the Court had been elected by the National Transition Council for a transitional period. With regard to article 14, paragraph 5, of the Convention, he wanted to know whether sentences handed down by the High Court of Justice were subject to review.

44. Mr. EL-SHAFEI said that many of the questions contained in the list of issues had been dealt with too rapidly by the Guinean delegation and the answers given had not been sufficiently detailed. On the question of disappearances, he felt that the death of those responsible did not absolve the State of its responsibility for conducting investigations, since the purpose of those investigations was to establish responsibility for the crimes and, where appropriate, to provide compensation for the families of victims. He would also welcome further information concerning reports of disappearances and extrajudicial executions which had occurred after the end of military rule. Amnesty International had cited cases of torture during pre-trial detention which had apparently not been investigated by the authorities. He wondered whether the delegation could shed any light on that question. The Guinean delegation had earlier maintained that lack of funds for the organization of political parties had been the reason for the postponement of the elections. He was concerned that the elections might be postponed again on the same grounds and was eager to know what measures the Government had taken to remedy the situation. He also wished to know whether there were specific legal provisions applicable to cultural and ethnic minorities.

45. Mrs. CHANET said that she shared Mr. Wennergren's concern that the continuing use of the death penalty was incompatible with the provisions of article 6 of the Basic Law. She was also concerned that the restrictions provided for in article 22 of the Basic Law were incompatible with the provisions of the Covenant. According to Amnesty International, 63 cases of disappearances had still not been cleared up. The fact that the disappearances had occurred under the former regime was not a valid excuse, and the State could not shirk its responsibility for carrying out investigations.

46. Violence and deaths during demonstrations appeared to be commonplace and she wondered whether the legislation on the use of firearms by security forces was based on the principle that firearms should be used only in cases of legitimate self-defence. With regard to article 7 of the Covenant, Amnesty International had reported a case where 24 prisoners had been severely beaten, yet no action had been taken against the prison officers concerned. Perhaps the Guinean delegation could clarify that situation. She considered that the resignation felt by victims of torture and ill-treatment referred to in article 106 of the report was scarcely a valid argument. Proper legal protection should be

(Mrs. Chanet)

provided in order to overcome such attitudes. If victims knew that they had the support and protection of the law, perhaps they would be less reluctant to come forward.

47. With regard to article 9 of the Covenant, she was concerned by reports that secret detention centres had been set up outside the control of the public authorities. Political opponents of the Government, including members of the Rassemblement du Peuple Guinéen, had been arrested and were allegedly being held in such centres. She asked whether there was any truth in those reports.

48. Mr. PRADO VALLEJO said that the issue of whether or not there were any political detainees in Guinea needed clarification. Further, it was astonishing that the new authorities had not fulfilled their prime obligation to investigate allegations of torture and the extrajudicial executions which were known to have been carried out. The reporting State should explain the reasons for any detentions which had taken place without due process and the measures taken to prevent such occurrences. He would also welcome information on how the fundamental principles of the Covenant were to be applied concerning recourse against decisions given by security and military courts. It was disquieting, for example, to hear that the identity of the military personnel who had been convicted was unknown. He therefore wished to know whether the authorities had taken steps to prevent secret trials and verdicts, for which there could be no justification. Any decisions taken to rectify the situation where individuals were unaware of charges or sentences against them should also be indicated. The same applied to decisions taken to prevent instances where persons accused and sentenced of crimes were denied access to legal advice. Finally, he inquired whether any steps were being taken to reveal the location of and then close secret detention sites.

49. Mrs. EVATT joined in emphasizing the importance of investigating all allegations of torture, disappearance and death in custody. An independent agency to investigate and report on torture and similar abuses, and where necessary, initiate punishment and award compensation, could help to overcome the regrettable attitude of resignation adopted by torture victims. Guinea's recognition of the assumption of innocence and of legal limitations on the power of detention was encouraging. However, she would appreciate further information on the practical application of the relevant laws in view of the continued allegations of arrests, arbitrary detentions and political prisoners. Confidence in the democratic process could be restored through scrupulous observance of the rules laid down by law, which entailed providing access to legal advice, informing concerned families and making a habeas corpus procedure immediately available to detainees. More practical steps were therefore needed to provide the underlying infrastructure in which all law enforcement officers, the judiciary and the independent legal profession received the required training. She wished to know whether Guinea had implemented its previous assertions that all judges should be lawyers. In addition, as fair trial and protection against arbitrary detention depended on the existence of well-trained judges and lawyers, she would welcome further details on their training and on action taken to ensure that the assumption of innocence was preserved with guarantees.

(Mrs. Evatt)

50. Since freedom to hold meetings and organize was vital to democracy, she asked whether there was any substance to the allegations that the Rassemblement du Peuple Guinéen had been denied that opportunity, and that some of its members had been arrested and detained. It had also been suggested that there were restrictions on the right to strike and she would welcome further clarification on the matter.

51. Mr. FODOR said that he would appreciate details of the scope of competence of the High Court of Justice and the type of cases referred to it. With regard to implementation of article 6, paragraph 5, of the Covenant, he requested information concerning the statutory provisions applicable to death sentences on persons below the age of 18 and asked whether there were any legal prohibitions on carrying out death sentences on pregnant women.

52. Referring to allegations of the use of hand grenades against civilians by the security forces, he inquired whether such use was permissible by law and, if so, whether any limitations applied. He also wished to learn whether any effective investigation had been conducted into those incidents and if the perpetrators had been convicted. Finally, given that prison conditions in Guinea were reportedly primitive and unhealthy, it would be helpful to know whether juvenile offenders were segregated from adults in all prisons. Statistics on the number of deaths due to malnutrition and disease in prisons and detention centres over the past five years would also be useful.

53. Mr. BRUNI CELLI endorsed the questions already asked concerning the death penalty, the investigation of torture complaints, secret and closed trials, political prisoners and prison conditions. Referring to the dissolution of associations provided for under article 23, paragraph 3, of the Basic Law, he requested details concerning the method used to dissolve such associations and the authority which decided their dissolution. He also wished to know whether any organic law governed the dissolution process, and if so, whether it was enacted according to the principles of the Covenant.

54. He would appreciate details of how the right to cultural preservation provided for in article 19, paragraph 3, of the Basic Law was applied in relation to article 27 of the Covenant. According to paragraph 121 of the report, Guinea was sheltering over 300,000 refugees, who were not housed in camps. He wondered whether their culture was fully respected and whether, in view of the number of refugees, any resulting impact was felt on the various cultures in Guinea itself.

55. Mr. NDIAYE, referring to article 76 of the Basic Law, drew attention to the risk of serious conflict between the President of the Republic and the National Assembly. Although the only obligation in respect of the Covenant was to ensure broad participation in the administration of public affairs, a much simpler system could have been envisaged. Of the 30 African States which had ratified the Covenant, Guinea was neither the poorest nor the least informed. It was therefore in a position to take more positive action with regard to torture and prison conditions. Vocational training with a view to social rehabilitation was a better preventive measure than punishment in the case of petty offenders. The

(Mr. Ndiaye)

fact that some of those responsible for disappearances were now dead was no justification for the State's failure to investigate the disappearances and compensate the families of victims.

56. With regard to the obligation to vote, he wondered whether there were any related penalties and also how voting was organized. He then requested further details concerning the training, status and recruitment of judges. In West Africa women were generally highly politicized and reasonably well educated. Traditions and values notwithstanding, he felt that their demands were probably more forceful than the report seemed to suggest. He asked whether the press, with its narrow market, had yet received the assistance from the State which it had earlier been said to need. In terms of minorities, he said that Guinea, which had both religious and linguistic minorities, had taken insufficient account of the Covenant. He inquired whether those minorities had the right to practise their respective languages and culture as provided under the Covenant. More details should also be given concerning Guinea's ethnic minorities, which were relatively undeveloped compared to the larger ethnic groups.

57. Further explanation should be provided concerning article 77 of the Basic Law, which stipulated, unusually, that treaties could only be ratified by a law. He also believed that article 86 was dangerous in providing that only the National Assembly could make accusations against the head of State, who would then be replaced by the President of the National Assembly. Finally, he would welcome information on whether implementation of the Covenant was affected by the situation in Liberia.

58. The CHAIRMAN announced that the deadline for the submission of the fourth periodic report by Uruguay had been extended from 21 March 1993 to 31 December 1994.

The meeting rose at 6 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1224th MEETING

Held at Headquarters, New York,
on Friday, 2 April 1993, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Guinea (CCPR/C/57/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Thiam (Guinea) took a place at the Committee table.

2. Mr. POCAR, resuming the Committee's questioning of the delegation of Guinea under the list of issues, noted that the replies received thus far related more to the content of Guinean law than to its practice.

3. Referring to section II (e) of the list of issues, he said that the assurance that the incidence of torture and inhuman treatment had decreased in recent years, while perhaps somewhat optimistic, was nevertheless welcome. Guinean officials appeared to believe that they had a right to commit such acts against detainees, despite the provisions of the law. A programme of education in the application of the law was therefore necessary in order to change the mentality of officials. He agreed that such a process would require some time to show results.

4. Mr. HERNDL, referring to section II (c) of the list of issues, expressed concern at the frequent use of firearms by the public authorities and asked what regulations governed the use of firearms and what practical steps the Government had taken to limit their use.

5. With regard to article 10 of the Covenant, he wondered to what extent United Nations principles regarding the prevention of crime and the treatment of offenders had been taken into account in the formulation of national policy in that area.

6. He noted that, despite the provisions of articles 7 and 14 of the Basic Law which guaranteed freedom of religion, the Government had seen fit to move against the emergence of certain fundamentalist sects. He hoped the Government was aware that under article 18 of the Covenant, freedom to manifest one's religion or beliefs could be subject only to such limitations as were prescribed by law and were necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

7. He found it difficult to accept the claim that there were no minorities in Guinea, since the report itself made reference to a number of "national languages" (para. 135 (b)). It seemed therefore that article 27 of the Convention was applicable.

8. Mr. THIAM (Guinea) said that the right to life was enshrined in the Basic Law. Although the Penal Code provided the death penalty for extremely serious crimes, since 1987 no one had been executed in Guinea. In fact, the maintenance of the death penalty was more a deterrent to crimes which threatened the lives of others than a manifestation of the State's intention to apply that penalty. In that connection, a vigorous public debate was currently under way

(Mr. Thiam, Guinea)

on whether the death penalty should be abolished. He recalled that under the previous regime, the death penalty had frequently been applied for political crimes. He hoped that that practice would never recur in Guinea. Judges were currently required to hand down the sentences provided by law, which were proportional to the offences committed. The Basic Law, in fact, sought to create a new legal framework and a new legal thinking in Guinea. Unfortunately, there was no magic wand with which to abolish all the vestiges of the country's past. Time was needed to change people's mentalities and to progress towards the universal application of the Covenant in Guinea.

9. Replying to questions concerning the State Security Court and the military courts, he explained that those institutions had been abolished. They had been created on a tempor ry basis to deal with a particular situation which no longer existed.

10. The High Court of Justice had been established to exercise power of review over State officials, including the President of the Republic and candidates to national office, and to help dispel the idea that certain high officials could act with impunity.

11. On the question of disappearances, he acknowledged that hundreds of thousands of people had disappeared under the previous regime. The current Government had the will, but not the resources, to provide compensation to those who had suffered. It had therefore decided to create a legal framework which would guarantee that such events did not recur in Guinea. Despite its lack of resources, it had provided some modest assistance to those who had suffered most, especially women and children, and had returned all confiscated property to its rightful owners.

12. The practice of torture persisted, unfortunately, because it was difficult to change habits acquired over a period of 26 years, particularly since the new Government had been obliged to retain some officials of the former regime. The situation was better in urban centres than in rural areas and, on the whole, torture was now the exception rather than the rule; strenuous efforts were being made to eradicate those exceptions.

13. Replying to the question concerning a reported massacre by security forces, he said that an inquiry had been conducted, as a result of which a number of security officials had been tried and sentenced in accordance with the law.

14. The attitude of resignation of victims had been mentioned in the report (para. 135 (a)) not as an excuse for the continued violation of their human rights but as a reality which impeded the Government's efforts to deal severely with those responsible for violations.

15. Turning to the question of the alleged widespread use of firearms, he regretted that he did not have before him the text of the relevant legislation on the use of firearms. Such use was, however, regulated and security officials were prohibited from using lethal ammunition in performing their duties. He noted, in passing, that some of the students arrested in a recent protest had been found to be carrying military weapons.

(Mr. Thiam, Guinea)

16. On the question of secret detention centres, he pointed out that the centres that existed under the previous regime had been known to all Guineans. The problem had been that the legal authorities had no access to or control over them. Since 1988 there had been no detentions in those centres and he wished to state emphatically that there were currently no political prisoners in Guinea. Indeed, the Government was considering reopening one of the centres as a museum and a monument to the martyrs who had lost their lives there, thereby turning the page on a painful chapter in the country's history.

17. With regard to the arrest of 22 members of the RPG, the leaders of that political grouping had been told to await the promulgation of the Basic Law before organizing their public meeting. The Basic Law provided for such actions within a given legislative framework. The RPG had openly flouted the authorities' instructions and its meeting had thus violated public order. Its members had been arrested and tried by due process of law, which included the right to a proper defence.

18. With regard to article 66 of the Basic Law, the real significance of that provision was that the considerable powers of the President were subject to control by the National Assembly. In fact, the President could not make indiscriminate use of his powers without jeopardizing his mandate.

19. Turning to the question of prison conditions, he explained that in certain prisons inmates were separated by sex, age or the nature of their offence, while in others such separation was not possible. No one under the age of 16 was imprisoned, unless that person posed a threat to public order. A number of non-governmental organizations were working with the juvenile courts in rehabilitating juvenile offenders. He hoped that such initiatives could be extended throughout Guinea, but lack of resources and the priorities imposed under the country's structural adjustment programme made that an unlikely prospect in the near future.

20. Stricter measures such as imprisonment were imposed on juvenile offenders between the ages of 16 and 18 if they posed a threat to public order. Otherwise, they were placed with foster families or in the care of teachers or representatives of non-governmental organizations. Government policy aimed at their rehabilitation, but that was not always easy to achieve because of lack of resources.

21. He was unaware of the exact number of magistrates, many of whom were currently undergoing retraining in Senegal and France. One of the first acts of the Second Republic had been to prohibit clerks from acting as judges. In order to promote the expansion of the legal profession, programmes had been established to provide further training.

22. Pregnant women could not be executed until they had given birth, but there was no record of any woman having been executed. In addition, individuals under 18 or over 62 could not be sentenced to death.

23. The right to strike was recognized in both the Basic Law and the Labour Code. Three major labour unions operated throughout the country.

(Mr. Thiam, Guinea)

24. The situation in Liberia had had a major impact on Guinea, which had given shelter to 485,000 refugees in 1992. The recent escalation of the conflict was expected to bring some 8,000 more refugees to its territory. Since the refugees generally belonged to the same ethnic group as their hosts, no cultural problems had arisen, but the situation with regard to sanitation, nutrition, health and the environment was becoming increasingly serious. Just providing cooking fuel for the refugees had led to significant deforestation. Guinea was pursuing a policy of encouraging self-sufficiency among the refugees which had resulted in the clearing of even more forest for additional crop land. Continuing international assistance to those refugees would be required to supplement Guinea's own meagre resources.

25. With regard to pre-trial detention, the Attorney-General was the designated authority for authorizing detention and investigating charges, whereas under the old regime, detention could be authorized by any official. Respect for the 72-hour limit on pre-trial detention was strictly enforced and authorities were punished if that period was exceeded. The enforcement authority of the Attorney-General had been strengthened as well.

26. Complete freedom of religion was enjoyed in Guinea, and Government authorities intervened only when mutual tolerance was affected. Muslims and Christians had coexisted for many years, and intermarriage between religious and ethnic groups was frequent. No specific legislation on discrimination had been passed because the Government felt no need for it.

27. Mr. SADI said he was delighted to find that freedom and democracy were being established in Guinea and that efforts had been made to improve the country's human rights record. During the dialogue, he had been struck by the fact that laws could be changed much more easily than the mentality of an entire country. A culture of human rights and democracy was needed, which could not be built through the enactment of laws or the creation of structures. In order to foster such a culture, the Government must rely on early education in human rights and democracy. The dissemination of human rights information in rural areas and a determined effort to prosecute serious human rights violations were also important.

28. The problem was how to overcome the legacy of the former regime in the face of people's resignation. Compensation alone was not enough; the most effective way to prevent abuses from recurring was to bring violators to justice. He had hoped that Guinea would offer an example to other African countries by creating special tribunals to prosecute violations committed under the previous regime; that might also help to change people's mentalities. The Government must lead the way by showing that it was determined to prosecute human rights abuses.

29. Mr. EL-SHAFEI said that, through the oral responses to questions, he had gained a clear picture of the efforts which the Second Republic was making, during the transitional period, to rid the country of the legacy of its painful past. To summarize his main areas of concern, the new Government had inherited a cruel system of ill-treatment of prisoners. Torture, which had been commonplace, was currently outlawed, but the fact that some incidents continued to occur was cause for concern to the Committee. The legal and political guarantees contained in the Basic Law should help to improve the situation with

(Mr. El-Shafei)

regard to disappearances. It might be useful to provide guarantees of minority rights in law, and he hoped that article 27 of the Covenant would be taken into account.

30. He was encouraged by the evidence of positive change in Guinea and hoped that the new institutions would fulfil all their international obligations.

31. Mr. PRADO-VALLEJO welcomed the steps taken in Guinea towards democracy, which was essential for the full enjoyment of human rights. Based on the dialogue, he wished to make a number of recommendations in areas of concern to the Committee. First, dissemination of information about the Covenant must be promoted so that individuals would know their rights, and human rights education must be introduced in schools. Second, domestic legislation must be made fully compatible with the Covenant in order to provide human rights safeguards. His major recommendation in that area was the establishment of the right of appeal against decisions of the State Security Court and the military courts which might jeopardize the right to life. Third, detainees must be informed of the charges against them in order to be able to prepare their defence, and the Government must provide legal assistance. Fourth, the time-limit for pre-trial detention must be respected and detention should be the exception, not the rule. Fifth, the Government must make greater efforts to investigate abuses in order to guarantee remedies to the victims and to punish the guilty parties.

32. Mr. HERNDL said that everyone recognized that Guinea was a State in transition towards a true democracy in which human rights would be a fundamental element of State policy; as noted in paragraph 4 of the second periodic report, it would be a State which was subject to the rule of law and which respected human rights and individual freedoms.

33. The new Basic Law compared very favourably with the old Constitution, even though there were still some gaps in it. It would be worth carrying out a review of all the special courts which had been established over the years to remedy specific situations, particularly military courts and other emergency bodies; all criminal matters should be dealt with in ordinary courts.

34. The objective of establishing a genuine culture of human rights in Guinea, referred to in the final paragraph of the report, would respond to the wishes of the Committee and also of the international community, and he hoped that it would be achieved.

35. Mr. WENNERGREN said that while it was deplorable that so many family and personal tragedies had occurred in Guinea since 1984, it was gratifying that the era in question was now over. It had not been possible to change everything immediately after the change of Government in 1984, and much had happened since then that had breached the Covenant and human rights principles, including disappearances, murders, torture, illegal detention and restrictions on freedom of expression and political freedom. However, it was time to look to the future. He was sure that the Guinean authorities were trying to assist all those who had suffered in the past. It was significant that Guinea now had a Basic Law and was proceeding on that basis towards a future of democracy and a state of law in which the human person and human dignity would be upheld. By

(Mr. Wennergren)

the time the next periodic report was prepared, the Guinean authorities should be close to fulfilling all their obligations under the Covenant.

36. Mrs. CHANET said that in any period of transition, much that had been undertaken remained incomplete. The Guinean authorities also had to deal with the legacy of the past. She welcomed the positive developments in Guinea: the Basic Law, its approval by referendum in 1990, the development of a multi-party system, the abolition of the State Security Court and the country's forthcoming accession to the Optional Protocol. However, some matters of concern remained, especially with regard to laws authorized under a broad interpretation of public order which did not accord with the Covenant.

37. It was regrettable that there were still cases of torture and ill-treatment in Guinea. Although it had been said that there were no longer any political prisoners in Guinea, the rules governing detention were somewhat vague and undermined respect for the applicable provisions of the Covenant.

38. In a period of intense legislative activity, it should be ensured that new laws were in conformity with the Covenant. Basic legal conditions must be created to ensure respect for the fundamental rights enshrined in the Covenant. The legislation on firearms must accord strictly with the recommendations of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. There must be strict rules on detention. The 72-hour limit for pre-trial detention was too long. No systematic information was available, in accordance with article 9 of the Covenant, on the reasons for arrest, and it seemed that no records were kept of the date, duration and place of detention of detainees to which families could have access. Furthermore, there seemed to be no system for the judicial authorities to monitor places of detention or even the records of detainees. Legal limits on preventive detention, were needed, and the right to be brought before a judge must be guaranteed in accordance with the Covenant. Considerable efforts were needed to increase the level of public information and education, and to improve the training of law enforcement officials.

39. Mr. BRUNI CELLI said that while the Guinean Government was making efforts during the transitional period to ensure respect for human rights, much remained to be done to bring domestic legislation into line with the Covenant and to ensure implementation of the Basic Law in order to develop a culture of human rights.

40. Although the representative of Guinea had noted that it was much easier to change laws than to change habits and customs, that could not be an excuse for allowing torture to continue. States were obliged to create conditions that would ensure respect for human rights, including police oversight and the provision of education and information to police officers, prison officials and members of the armed forces. There must be a speedy investigation of reports of human rights violations and those responsible must be punished, including any senior officials who gave orders for such violations.

41. Mr. FODOR said that the report provided little information on how the provisions of the Covenant were being applied in Guinea. Over 60 individuals arrested in Guinea in 1984 and 1985 remained unaccounted for. The reasoning

(Mr. Fodor)

that the people responsible for those disappearances were probably dead was not satisfactory; a proper investigation was needed to find out who was responsible.

42. The representative of Guinea had admitted that torture existed in Guinea. It was unacceptable that torture and ill-treatment of detainees should occur in any State party, even if the mentality of certain people or groups of people needed to be changed. There was also a need for tighter monitoring of the activities of the police and security forces, better training of those forces and more effective investigation and expeditious sentencing of those who used excessive force. It would appear that the rules and regulations governing the use of firearms by police and security forces were not strict enough and that compliance with those rules was not properly monitored.

43. Given the favourable developments in Guinea, it was difficult to see why it had been necessary to set up a High Court of Justice to replace the State Security Court.

44. The Guinean delegation had indicated that Guinea had embarked on a process of democratization; further efforts were needed to achieve the objective of establishing a genuine culture of human rights in Guinea.

45. Mrs. EVATT said that the representative of Guinea had spoken very frankly about the difficulties and obstacles his country faced. Law enforcement officials and even the judiciary seemed to be unfamiliar with the responsibilities and limitations on power which were inherent in respect for the rule of law and which involved the acceptance and enforcement of the Basic Law and of judicial orders. There was a need to reach the hearts and minds of law enforcement officials in that respect, and the lead should come from the highest levels of Government. There was also a need for strict compliance with the rules governing detention, and for further training of law enforcement officials.

46. It might be useful if there were an independent agency to which individuals could complain of human rights abuses, with the necessary standing to make investigations and institute legal proceedings. It would also help if the Government could encourage non-governmental human rights organizations to consider problems affecting the implementation of human rights and could consult them on the preparation of reports to the Committee. Positive action was needed to remove not only laws which discriminated against women but also the barriers which arose from traditional attitudes towards the role of women in society and from practices which robbed women of their place in society, so that they could have equal access to education and to true participation in political and social life.

47. Mr. FRANCIS said that the Committee could rely on the representative of Guinea, as a senior official in the Guinean administration, to be a watchdog for human rights in Guinea. On the question of torture, he felt that such abuses could not persist if senior officials made frequent visits to places of detention; such visits should be unannounced. Mr. Thiam should suggest that the Guinean Association for Human Rights also monitor detention centres by making visits to them; that Association could do much to assist in achieving the objectives to which Guinea was committed.

48. Mr. NDIAYE said that the Government of Guinea should continue on its chosen course of protecting human rights, a course which, while difficult, could be followed with the requisite determination. In particular, while the problems of relations among minorities in Guinea had eased, the time had come to act to pre-empt future problems. In that connection, the Government should pay particular attention to article 27 of the Covenant. He trusted that the representative of Guinea would ensure that the provisions of the Covenant were widely disseminated in his country, and suggested that Guinean human rights organizations should be invited to participate in the preparation of the next report.

49. The CHAIRMAN said that it was clear that the Government of Guinea was headed in the right direction in terms of implementing the provisions of the Covenant, notwithstanding its internal and external political difficulties. The Committee looked forward to an indication of further progress in the third periodic report, the deadline for submission of which would be deferred from November 1993 to a later date, given the short span of time between the current session and the original date of submission for the third periodic report.

50. Mr. THIAM (Guinea) said that the dialogue with the Committee had been extremely fruitful and that his Government welcomed the Committee's cooperation in helping it achieve its human rights goals. It would be useful if the Centre for Human Rights could organize a human rights seminar in Guinea to enhance awareness of the provisions of the Covenant and to support Government initiatives in that area. Appropriate materials for schools would also be valuable. The adoption of the Basic Law would improve the exercise of human rights in Guinea, as well as the rule of law in general. With regard to the keeping of records of admissions to detention centres, the Government did in fact have such a system, and also had a policy of conducting surprise visits at any hour to ensure compliance with the law. Human rights organizations were active in Guinea and helped to prevent human rights violations and to ensure that human rights policy was transparent.

51. Mr. Thiam (Guinea) withdrew.

The meeting was suspended at 12.35 p.m. and resumed at 12.40 p.m.

Draft general comment on article 18 of the Covenant (continued)

52. Mr. DIMITRIJEVIC said that the new paragraphs 9 and 10 he was proposing represented an attempt to reflect the various views expressed in the Committee. Paragraph 9 dealt with the principal limitations relating to article 18.3, and paragraph 10 dealt with other matters, largely falling under article 19.

53. The general logic of paragraph 9 followed that of article 18 of the Covenant, indicating that freedom of religion or belief could be restricted only if limitations were prescribed by law, and then stating the grounds. Paragraph 9 also covered the limitation on the freedom of expression and religion established in order to protect other rights, notably equality and non-discrimination. The paragraph then indicated the grounds on which restrictions on the freedom to manifest religion or belief were not authorized under article 18. Public order (ordre public) was included in square brackets, pending further consideration of that complex topic by the Committee. Paragraph 9 also mentioned that the protection of morals should not be based on

(Mr. Dimitrijevic)

a concept of morality derived exclusively from a single religious tradition or ideology, a formulation which was somewhat weaker than the original draft. Lastly, the paragraph referred to the duty of States parties to report limitations. The other elements of the proposed new paragraphs 9 and 10 were essentially the same as in the previous draft.

The meeting rose at 1 p.m.

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Forty-seventh session

SUMMARY RECORD OF THE 1225th MEETING

Held at Headquarters, New York,
on Friday, 2 April 1993, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 18 of the Covenant (continued)

New paragraph 9

1. The CHAIRMAN invited comments on the text of the new paragraph 9, submitted by Mr. Dimitrijević, which read:

> "9. Article 18 (3) permits States parties to restrict the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights of others. In determining the values to be protected States parties should proceed from the provisions of the Covenant, in particular those on the protection of the rights of others, equality and non-discrimination (articles 2, 3, 5, and 26). Limitations imposed on manifestations of religion or belief must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: no grounds for restrictions other than those specified are permissible. In particular, restrictions on the freedom to manifest religion or belief based exclusively on national security [or public order (ordre public)] are not authorized by article 18 (3). Limitations should be applied only for those purposes for which they were prescribed and should be directly related and proportionate to the specific aim on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee believes that limitations on the freedom to manifest a religion or belief for the purpose of protecting morals should not be based on a concept of morality derived exclusively from a single religious tradition or ideology. The obligation to provide an effective remedy, stated in article 2 (3) of the Covenant, constitutes a vital safeguard against impermissible limitations of the rights protected by article 18. Because limitations of the rights recognized in article 18 must be exceptional in nature, States parties' reports should provide information on their justification."

2. Mr. SADI, referring to the second sentence of the new paragraph 9, said that the meaning of the word "values" was difficult to grasp, although it apparently meant the determination of the freedom to manifest religion and belief. The precise meaning should therefore be specified. With reference to the fifth sentence, he wished to know on what grounds its content could be justified. As for the eighth sentence, he was not sure how it should be interpreted if, for example, a concept of morality was derived from various religious traditions which were contradictory. While appreciating the difficulties entailed in preparing the draft comment, he believed that it should be made much clearer if States parties were to understand article 18 (3), which now seemed more obscure.

3. Mr. HERNDL, referring to the fifth sentence of the new paragraph 9, said that the words inside the square brackets should be deleted. In all probability, the adjective "public", which appeared in the first sentence, applied to "safety", "order" and "health", as in the case of article 19 (b), which by contrast, repeated the word "public" before each noun to which it applied. In that context, it might be useful to refer to the travaux préparatoires. An important idea contained in the former paragraph 10 had also been excluded, namely that the least restrictive means should be used in imposing a restriction.

4. Mrs. EVATT agreed that, in the fifth sentence, the words inside the square brackets should be removed for that same reason. She also felt that the sense of the other religion in the eighth sentence could perhaps be better encompassed.

5. Mrs. HIGGINS agreed with the suggestion to include a reference to the principle which applied to all restrictions, namely that they should be interpreted conservatively. The obvious place to do so was in the third sentence. She similarly agreed that the meaning of the word "values" in the second sentence was unclear, and also found the word "determining" unsatisfactory. She therefore proposed replacing the phrase "In determining the values to be protected" with "In interpreting the scope of the permissible limitations", and additionally that the entire sentence should be preceded by the present third sentence. Concerning the question of public order, she concurred that, unless it was made clear that "order" and "public order" were synonymous, the phrase should be deleted. She then proposed rephrasing the end of the sixth sentence to read either "proportionate to the specific aim to which they are directed" or "proportionate to the specific need on which they are predicated", believing the latter to be preferable. Turning to the eighth sentence, she asked members to share their views as to whether morality should be interpreted on the basis of being derived exclusively from a single religious tradition. While the manifestation of a religion should never be limited by reference to a single tradition, lack of respect for a religion could properly be based on a single tradition. She proposed that the ninth sentence should be deleted, and that the words "both as a matter of law and in their application in specific circumstances" should be added at the end of the tenth sentence. Lastly, believing that an important omission had been made, she said it should be added that the permitted limitations in paragraph 3 of article 18 referred to the freedom to manifest one's religion or beliefs, but that there was no permitted limitation at all concerning freedom from coercion (para. 2), entitlement to adopt a religion of one's choice (para. 2) or the liberty of parents (para. 4). In other words, it should be clear that the limitation clause applied to the manifestation, since there were no circumstances which would allow coercion or anything else of that nature.

6. Mr. WENNERGREN prefaced his remarks by saying that three steps were involved in determining the extent to which the States parties could decide on limitations to the freedom to manifest religion or belief. The first involved the choice of objects and objectives to be protected against such limitations; the second involved the imposition of the legal rules enforcing those limitations; and the third involved the application of protective rules. He too had difficulty in understanding the second sentence. He therefore proposed that it should simply read: "When selecting objectives and objects necessary to protect against manifestations of religion or belief, States parties should

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proceed from the provisions of the Covenant and the values enshrined in them". The third sentence was accordingly a repetition and should be deleted. As for the fifth sentence, he proposed that it should read: "Restrictions on the freedom to manifest religion or belief based exclusively on national security or public order in the sense of ordre public are not authorized by article 18 (3)". His final proposal was that the sixth sentence should read: "Imposed limitations should be applied only for those purposes for which they were prescribed and should be directly related and proportionate to the specific aim and need on which they are predicated".

7. Mr. POCAR said he shared the views expressed concerning the second sentence of the new paragraph 9. While he approved of Mr. Wennergren's proposal in that regard, he was unhappy in principle with the notion that a State party should have the possibility of selecting. He therefore endorsed the proposal made by Mrs. Higgins, which in his view provided the best clarification. He believed, however, that it would also be safer to add the word "fundamental" before the word "rights", as in article 18 of the Covenant. The problem of public order was more worrying; he wondered how to interpret the limitations in article 18 (3) as compared with those in article 19. It was not clear whether "public" referred only to "safety", or whether it also referred to "order", "health" and possibly even "morals". Evidently, it did not refer to "fundamental rights and freedoms".

8. The French version of article 18 (3) referred to protection de la sécurité, de l'ordre et de la santé publique, ou de la morale. Hence, according to the French text, "safety", "order" and "health" were "public", while "morals" were not. The situation became even more complicated in the light of article 19 (3) (b), which referred to "national security" instead of "public safety", and to "public order" and "public health or morals". It appeared that, in the English version, "morals" were always considered separately while, in the French version of article 19 (3), the word publiques referred to both santé and moralité. In any case, the Committee should say something about all those grounds of limitation instead of just referring to national security, which was understandable only in the light of article 19.

9. In the seventh sentence of paragraph 9, the Committee should make it clear that it was referring not only to discrimination on the basis of religion but also to discrimination based on other grounds, and it might be useful to mention those other grounds in the text.

10. He could agree to the deletion of the penultimate sentence of paragraph 9, which dealt with the obligation to provide an effective remedy. With regard to the last sentence of the paragraph, he wondered whether the exceptional nature of the limitations referred mainly to the State party's interpretation. Perhaps the first part of that sentence should be placed at the top of paragraph 9 and referred to in the context of the need for a strict interpretation of the limitations. In the last sentence of the paragraph, the Committee could indicate that it wanted States parties to report in a detailed manner on any limitations that they might impose on the freedom to manifest religion.

11. Mr. EL-SHAFEI said that the general comment gave rise to complications because the Committee was attempting to address religion and ideology in a single draft. Moreover, there were contradictions between the first sentence of

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paragraph 9, which should be considered as a chapeau for everything that was going to be discussed in other sentences of the text. While the first sentence referred to "public safety", the fifth sentence referred to "national security". Article 18 (3) made no reference to national security, which was not the same thing as public safety. National security had an external dimension, since it could also refer to an external threat. The reference to national security should therefore be deleted.

12. He agreed with Mr. Wennergren that the fourth sentence repeated the same information that was contained in the first sentence. With regard to the fifth sentence, he wished to know why States were not justified in imposing restrictions on the freedom to manifest religion or belief if the purpose of such restrictions was exclusively for the maintenance of public order. That matter should be thoroughly examined, since it appeared that the Committee was imposing limits on the sovereignty of the State.

13. In the eighth sentence of paragraph 9, the Committee was telling the State that it could not derive its concept of morality from its religion and traditions, and that the concept of morality should be based on an amalgam of elements. That sentence was potentially dangerous.

14. With respect to the last sentence, he agreed with Mr. Pocar that States parties should report on all limitations, whether they had been used exceptionally or regularly. The Committee was entitled to receive all kinds of information about the limitations that States parties imposed.

15. Mr. HERNDL said he had a serious objection to the use of the word "ideology" in the eighth sentence of paragraph 9. The end of that sentence should be amended to read "... derived exclusively from the traditions of one particular religion or belief".

16. Since "national security" was referred to in article 19 (3) (b) but not in article 18 (3), Mr. Dimitrijević had concluded that it was not permissible to impose limitations for national security reasons. The other elements - public order, public health and morals - were mentioned in both articles.

17. In the fifth sentence of paragraph 9, the words enclosed in square brackets should be deleted because article 18 (3) contained a reference to public order; the rest of the sentence should be retained. He had no particular objection to the reference to "national security".

18. With regard to the question of provision of a remedy, mentioned in the penultimate sentence of paragraph 9, he noted that, since the obligation to provide a remedy concerned all substantive articles of the Covenant, it might not be necessary to refer to it. However, since the Committee was referring to the application of article 18 by the legislator, it might be advisable to mention the idea of provision of a remedy as a way of safeguarding against impermissible limitations.

19. Mr. AGUILAR said that he supported Mrs. Higgins's proposal regarding the second sentence of paragraph 9. With respect to the fifth sentence, the French and Spanish versions of article 18 (3) seemed to contradict each other. In the French version, "public" did not refer to "morals". Since article 18 (3)

(Mr. Aguilar)

referred expressly to "public order", the words contained within square brackets in the fifth sentence should be deleted. In the same sentence, "national security" should be retained, since national security should not be the only reason for limiting the rights guaranteed in article 18 (3).

20. He agreed with Mr. Herndl that the word "ideology" should be deleted from the eighth sentence and replaced by the word "belief". With regard to the obligation to provide an effective remedy, he preferred the position taken by Mrs. Higgins. He considered that that obligation was addressed exclusively to the legislative power. In its comments on other articles, the Committee had not referred to the obligation to provide an effective remedy, and it should therefore not be included in the general comment on article 18.

21. Mr. LALLAH observed that although, as Mr. El-Shafei had noted, national security had an external dimension, the problem remained that the limitations that were imposed affected people inside the country. In any case, the difference between public safety and national security was not entirely clear.

22. The concept of "public health" was puzzling. He presumed that it concerned the health of all human beings, whether administered privately or publicly. Perhaps Mr. Dimitrijević could tell the Committee how that concept had been treated in the travaux préparatoires.

23. The concept of public morals posed a problem that might be impossible to solve within the confines of a general comment. However, the problem was, perhaps, academic. When a specific situation arose it might become clear whether the limitation was permissible and whether the level of that limitation was acceptable.

24. While he liked Mrs. Higgins's formulation for the second sentence, he suggested that the Committee should state, at the end of the sentence, that "... States parties should proceed from the necessity to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all the grounds specified in articles 2, 3, 5 and 26".

25. Mrs. Evatt had observed that the general comment did not refer to conscience and thoughts. Article 19 (3) dealt essentially with manifestations. Once a thought was manifested, it took the form of an expression, which was no longer a thought but which might include thought; the same held true for conscience. In his view, it seemed that higher priority was being given to freedom of conscience and thought than to freedom of religion and beliefs.

26. He agreed with Mr. El-Shafei that the Committee should not refer to "ideology" and that morality was something greater than a single religion or belief. He could accept the definition of morality as not being restricted to a particular religion. Lastly, the reference, in the penultimate sentence of paragraph 9, to the obligation to provide an effective remedy might not be necessary.

27. Miss CHANET said she was reluctant to accept Mr. Aguilar's comment on the differences between the English, French and Spanish versions of article 18 (3). In her view, the French and Spanish versions of the general comment should reflect the language used in the respective versions of the Covenant.

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28. With respect to the second sentence of paragraph 9, she did not consider it normal for a State party to determine the values to be protected. In paragraph 9, it might be more advisable to begin by stating what restrictions were possible under article 18 (3), and what the State could and could not do. It should be stated that, when a State had recourse to a limitation, it should explain - especially when it submitted a report - what it understood by that limitation and how it was justified with respect to public safety, order and health.

29. She agreed with Mr. Herndl's suggestion that the word "ideology" should be replaced by "belief". She would have great difficulty in accepting references to article 19 (3), since the Committee had not prepared a general comment on that article. Moreover, the restrictions contained in article 19 (3) concerned freedom of expression, which did not necessarily coincide with the freedom to manifest one's religion or beliefs.

30. Mr. NDIAYE said that, when the Committee considered draft general comments, the comments should be available in all of the official languages used in the Committee, since it was sometimes difficult to understand all of the subleties of the English version. In any case, the Committee should refrain from adopting the draft general comment on article 18 until it was available in the official languages of the Committee.

31. The second sentence of paragraph 9 was extremely dangerous, since it should not be for the State party to determine what values were to be protected. Further, the fourth sentence was redundant since it repeated what had been said in the first sentence.

32. It should be borne in mind that the Committee was dealing not only with beliefs but with beliefs that were expressed and manifested. Some of those beliefs were exclusive. He therefore wondered whether a State with well-established secular traditions, where all religions were practised freely or where most of the population accepted the State's secular traditions, the manifestation of exclusive beliefs could prompt the State to take action to maintain public order. In that regard, the fifth sentence of paragraph 9 could prevent the State from taking measures to maintain public order when beliefs were expressed that affected the freedom of others.

33. He agreed that, in the eighth sentence of paragraph 9, the word "ideology" should be replaced by "belief". He inquired why countries with a single traditional religion should not be allowed to base their public morality on that religion. Would such countries have to provide instruction about religions and traditions that were alien to them?

34. Mr. PRADO VALLEJO said that, in his opinion, articles 18 and 19 should be seen as totally independent. The two articles referred to different ideas, rights and limitations, and each had its own legal scope and consequences. Article 19 referred to national security, in other words to situations where the very existence of a State might be under threat, and it was clear that in such circumstances, limitations on freedom could properly be imposed. Article 18, however, dealt with a totally different question, namely the freedom of religious belief, which was a matter of individual conscience. It was therefore vital to make a clear distinction between the two articles.

35. The CHAIRMAN, speaking in his personal capacity, said he agreed with the general structure of the paragraph proposed by the Special Rapporteur. In his view, the word "public" in article 18 (3), referred to order, health and morals, as well as to safety. He agreed that it might be necessary to delete the reference to national security and to replace the words "values", "ideology" and "traditions" by more appropriate wording. On the question of a remedy, he retained an open mind and was prepared to go along with the majority view.

36. Mr. DIMITRIJEVIĆ said that he would attempt to sum up and accommodate the various views expressed by Committee members. There appeared to be a general consensus on the first sentence and on the proposal by Mrs. Higgins that, in the first part of the second sentence, the words "in determining the values to be protected" should be replaced by "in interpreting the scope of the permissible limitations". The aim of the sentence was to give States parties guidance when imposing restrictions and it was important not to give the impression that States parties should be ashamed of doing so, since in some cases a State had a duty to protect certain rights by restricting others. There had been no opposition to Mrs. Higgins' proposal to reinstate the third sentence from the original recommendation, which read: "In imposing restrictions, authorities should use the least restrictive means". In his view, reference did need to be made to national security, since that ground had been widely abused in the past, even if the countries concerned might have felt their interpretation was correct. In order to remove the doubts expressed by some members, the sentence could be worded as follows: "In particular, restrictions on the freedom to manifest religion or belief allowed in relation to other rights, such as those based exclusively on national security, are not authorized by article 18 (3). Because of the difficulties posed by the concept of public order and the danger of possible misunderstanding, the reference to it in square brackets should be deleted. The question was far too complex to be dealt with in a short general comment. In the sixth sentence, there appeared to be general agreement on Mrs. Higgins' proposal to replace the words "specific aim" by "specific need".

37. With regard to the eighth sentence, there were practical reasons for saying that limitations designed to protect morals should not be based on a concept of morality derived exclusively from a single religious tradition or ideology, since if a State did not allow for a modicum of pluralism in defining public morality, it was not meeting the standards set by the Covenant. There appeared to be a consensus in favour of maintaining the sentence, incorporating Mr. Herndl's proposal that the words "a single religious tradition or ideology" should be replaced by "the traditions of one particular religion or belief". With regard to the ninth sentence, opinions appeared to be divided on the question of the obligation to provide an effective remedy. The aim of the provision was to cover those laws which gave discretionary power to impose limitations. He suggested that the word "vital" in the ninth sentence might be omitted. With regard to the final sentence, while he acknowledged the point made by Mr. Pocar, he felt that, if something was done by way of an exception, the Committee was entitled to know the reasons on which the action was based. Perhaps it would be possible to delete the first part of the sentence and incorporate the amendment proposed by Mrs. Higgins.

38. Mr. SADI said he was unhappy with the first sentence of paragraph 9 because it placed the emphasis on the restrictions on the freedom of religion or belief, whereas article 18 (3) stressed the freedom itself. With regard to the rest of the paragraph, he would prefer to delete the second sentence, retain the third

and fourth sentences, delete the fifth sentence, retain the sixth and seventh sentences, and delete the eighth sentence, which he found totally unacceptable. The ninth sentence was inappropriate since the question could be more properly dealt with under article 2 (3) of the Covenant, and the tenth sentence should be retained as amended. While he would welcome the views of other members on the concerns he had expressed, he felt that unless they were addressed it would be difficult to reach a consensus.

39. Mrs. HIGGINS said she fully endorsed the excellent proposals put forward by Mr. Dimitrijević. In reply to Mr. Sadi, she wished to point out that article 18 (1) provided for the freedom to manifest a religion or belief, whereas article 18 (3) was a permitted limitation clause and needed to be dealt with separately. However, she did agree that the right, rather than the limitation, should be kept to the fore. Mr. Dimitrijević had failed to take into account her proposal, which no one had opposed, that a sentence should be included making it clear that the limitations in question applied to the manifestation of a religion or belief and could in no circumstances apply to the freedom from coercion or the liberty of parents provided for in paragraphs 2 and 4 respectively of article 18.

40. Mr. EL-SHAFEI said he agreed with the proposal to replace the first part of the second sentence by the words "In interpreting the scope of permissible limitations". He was concerned that Mr. Dimitrijević had not taken into account his remark drawing attention to the repetition in the first and fourth sentences. With regard to the fifth sentence, he felt that national security was too broad a notion to be allowed as a reason for restricting the manifestation of religious beliefs. Such grounds had certainly never been invoked by countries in his region. While he understood the arguments put forward by Mr. Aguilar and Mr. Prado-Vallejo, he felt that the wording needed to be changed to make it more generally comprehensible. He suggested that the words "alleged to be" should be inserted before the words "based exclusively on". With regard to the eighth sentence, he observed that morals did not derive from one single religion or belief, but from a common heritage and a broad range of other historical and cultural factors. The purpose of the general comments was to facilitate the work of States parties and the Committee should be careful not to antagonize States by appearing to tell them that, if they had a single religion, their concept of morality could not be derived exclusively from it. Clearly, different wording was needed, perhaps along the lines suggested by Mr. Lallah. With regard to the ninth sentence, he wondered how a remedy could possibly act as a safeguard, since it was something which was only provided after the event.

41. Mr. AGUILAR said that he could accept the ninth sentence as modified by Mrs. Higgins and Mr. Herndl. In the fifth sentence, the phrase "based exclusively on national security" referred to the notion of national security mentioned in article 19 (3) (b), which encompassed national defence directed towards an external enemy, whereas the concept of public safety embodied in article 18 (3) concerned domestic security or the safety of citizens. He disagreed with Mr. El-Shafei's suggestion, with regard to the eighth sentence, that the Committee should accommodate diverse moral concepts so as to avoid antagonizing States parties. The Committee's role was to interpret the rights set forth in the Covenant. Article 25, for example, defined the voting rights of citizens, yet the standards it set forth were not enforced in most nations

(Mr. Aguilar)

of the world. If the Committee accommodated the status quo, article 25 would have to be jettisoned. He therefore agreed with the eighth sentence as worded by Mr. Dimitrijević, with the minor modifications proposed by Mr. Herndl.

42. Mr. NDIAYE observed that article 18 of the Covenant did not address the question of how morals and religion should be taught. In a country where the entire population was of the same religious persuasion, that religion could indeed be taught under the terms of the Covenant without infringing on the rights of others. Turning to the Committee's procedures, he said that when a proposal had received a favourable response, it should be read out to the members at dictation speed. The current practice failed to take all views into consideration, and thus rendered consensus impossible.

43. The CHAIRMAN, replying to Mr. Ndiaye, said that, given the constraints affecting translation, the Committee was obliged to mark on the basis of an English text, which, if adopted, would in any case be provisional.

44. Mr. NDIAYE said that the text could not be adopted on the basis of a version in a single language; a decision had to be based on versions in all working languages.

45. Mr. PRADO VALLEJO proposed that the wording of article 18 (3), should be retained at the end of the fifth sentence of paragraph 9, and that the words "national security" should therefore be replaced by "public safety".

46. Mr. POCAR said he was inclined to accept the fifth sentence as modified by Mr. Dimitrijević, on the basis of the comments of previous speakers. He approved of Mr. Lallah's suggestion that the second sentence, concerning the concept of non-discrimination, should be amended to include "all" the grounds for discrimination cited in articles 2, 3, 5 and 26. The problem might also be solved by adding a phrase to the effect that restriction could not be imposed for discriminatory purposes, or applied in a discriminatory manner. The sentence would thus cover all grounds for discrimination, not only those based on religion. He agreed with Mr. Sadi with regard to the first sentence: States should not, on principle, be invited to limit rights; he therefore proposed that the words "States parties" should be deleted and that the beginning of the sentence should read "Article 18 (3) permits restrictions on the freedom to manifest ...".

47. Mr. DIMITRIJEVIĆ recalled that Mr. Ndiaye had remarked that article 18 made no reference to the teaching of religion. However, in the eighth sentence, the phrase "morality derived from a single religious tradition", had been retained in order to make it clear that the State could not use criteria based on a single religion to restrict religious freedom. He agreed with Mr. Pocar that the words "States parties" could be deleted from the first sentence to accommodate Mr. Sadi's objection.

48. He also agreed with Mr. El-Shafei that the second clause of the fourth sentence was repetitive, but the following sentence could not otherwise be introduced. The concept of national security was still at issue. The term "national security" was used in paragraph 9 precisely because it did not appear in article 18 (3). States should understand that national security was not a

(Mr. Dimitrijević)

permissible ground for restriction of freedoms. It was not necessary to provide an explanation of the distinction between national security and public safety because restrictions on freedom of religion were not permissible under either concept.

49. He agreed with Mrs. Higgins' proposal that limitations relating to article 18 (3) should under no circumstances apply to article 18 (2) and (4) dealing with freedom from coercion and protection of the liberty of parents.

50. Consensus had not been reached on several issues. For example, he strongly felt that the term "national security" should be retained in the fifth sentence. The problem with regard to the eighth sentence was not the existence of a consensual morality, based on the views of a whole society, as described by Mr. El-Shafei; it was morality as the grounds for limitations deriving from a single tradition, which excluded others. But in the interest of creating a consensus, the eighth sentence could be deleted and the word "vital" would probably have to be deleted from the ninth sentence.

51. Mrs. HIGGINS, referring to Mr. El-Shafei's concerns, agreed that the ninth sentence could be deleted. She felt, however, that his views on the issue of "national security" might be based on a misunderstanding of the fifth sentence, which was intended to state that article 18 (3) did not permit restrictions on the freedom to manifest religion by reference to national security. The problem could perhaps be solved by reordering the sentence to make it clear that a State must stay within the limitations set forth in article 18 (3), which did not include national security. Mr. El-Shafei had interpreted the eighth sentence as implying that the moral system of a given region could not be based on the religion of that region. But in fact the sentence said that limitations could not be based on a single moral system. One point at issue was limitation, not the State religion as such, and the sentence could be reworded to make that clear.

52. Mr. EL-SHAFEI said that the deletion of the words "in particular" from the fifth sentence would resolve any possible ambiguity in the fourth sentence. He agreed with Mrs. Higgins that the words "based exclusively on" could be deleted from the fifth sentence and replaced by a phrase such as "by reference to". He was disposed to agree with Mr. Lallah's wording for the eighth sentence, with regard to moral systems. Lastly, he would not object to the ninth sentence if the words "stated in article 2 (3) of the Covenant" were deleted.

53. Mr. DIMITREJEVIĆ suggested that, with the assistance of Mrs. Higgins, he could provide an adopted version of the draft for the next meeting.

54. The CHAIRMAN said that there appeared to be a consensus in the Committee on the following points: first, that the sentence regarding remedy should be deleted; second, that the basic structure of the draft, with minor adjustments, should be retained; third, that the sentence regarding national security should be worded so as to accommodate the concerns of Mr. El-Shafei and Mr. Prado Vallejo; fourth, that the sentence regarding limitations deriving from morality should be reworded to emphasize the elimination of intolerance.

55. Mr. DIMITREJEVIĆ said that, since it was Mr. Wennergren and Mr. Sadi who had requested the inclusion of the word "exclusively" in the fifth sentence, the Committee would need their consent to delete it.

56. Mr. PRADO VALLEJO said he welcomed Mr. Dimitrijević's offer to prepare a written text with the assistance of Mrs. Higgins for approval at a future meeting. Each Committee member should also be able to consult the text in his own language.

57. Mr. WENNERGREN said he could agree to the deletion of the word "exclusively" from the fifth sentence if that idea could be expressed in other terms.

58. Mr. LALLAH proposed a version of the second sentence that would accommodate Mr. Pocar's concern: "In determining the scope of the permissible limitations, States should proceed from the need to protect the fundamental rights guaranteed under the Covenant, including the right to equality and non-discrimination on all the grounds specified in articles 2, 3 and 26 of the Covenant."

59. Mr. DIMITRIJEVIĆ said he approved of Mr. Lallah's version, which clarified the relationship between limitations and the protection of rights.

60. The CHAIRMAN said that, as a consensus had been reached on the text, he hoped that the Committee would be able to adopt it at the next meeting.

The meeting rose at 6.05 p.m.

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Forty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1226TH MEETING

Held at Headquarters, New York,
on Monday, 5 April 1993, at 10 a.m.

Chairman: Mr. ANDO

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Draft general comment on article 18 of the Covenant (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1226/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 18 of the Covenant (continued)

Paragraphs 9 and 10

1. Mr. DIMITRIJEVIĆ read out the revised version of paragraph 9 of the draft general comment on article 18 as follows:

"Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others. The freedom from coercion to have or adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of the permissible limitation clauses, States parties should proceed from the need to protect the fundamental rights guaranteed under the Covenant including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. In imposing a restriction on manifestations of religion or belief, authorities should use the least restrictive means. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified t[herein] [but authorized in regard to other rights protected in the Covenant], such as national security. Limitations should be applied only for those purposes for which they were prescribed and should be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee believes that limitations on the freedom to manifest a religion or belief for the purpose of protecting morals should not rely exclusively on criteria based on a single religion or belief. States parties' reports should provide information on the full scope and effects of limitations under article 18 (3), both as a matter of law and their application in specific circumstances".

2. Mr. LALLAH read out the following alternative text for the penultimate sentence of paragraph 9:

> "The Committee observes that morality is a secular concept deriving from many social, philosophical and religious traditions. Consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morality must be based on the special character of morality as not deriving exclusively from a single tradition or belief".

3. Mr. HERNDL said that the formulation "authorities should use the least restrictive means" at the end of the fourth sentence was too weak; he would prefer stronger language. On the issue of protection of morals, he preferred the formulation suggested by Mr. Dimitrijević to the one proposed by Mr. Lallah.

4. Mrs. HIGGINS favoured retaining the idea contained in square brackets, but rewording the phrase to read "even if they would be allowed as restrictions to other rights protected in the Covenant". She favoured the alternative text proposed by Mr. Lallah for the penultimate sentence, but did not like the term "secular". She therefore suggested that the first sentence should be replaced by the following: "The Committee observes that the concept of morals derives from many social, philosophical and religious traditions."

5. Mr. WENNERGREN suggested that the first sentence of paragraph 9 should end with the word "belief", and that the beginning of the second sentence should be reworded to read: "Only such limitations are permitted that are prescribed by law and are necessary ...". The seventh sentence, which dealt with the State party as a legislator, should be redrafted to correspond better with the last sentence.

6. Mr. SADI endorsed the text proposed by Mr. Lallah and said that he shared Mrs. Higgins' reservations regarding the use of the term "secular". From his reading of history, however, morality was derived basically from religion, and that fact should be reflected in the word order.

7. Mr. EL-SHAFEI supported the text proposed by Mr. Lallah, taking the suggestions made by Mrs. Higgins and Mr. Sadi into account.

8. Mrs. EVATT welcomed the new draft, but wished to record her views on the draft general comment as a whole, since she had joined the process at its later stages.

9. The Covenant drew a fine legal distinction between belief and its manifestation. That distinction was not meaningful in the context of some religions, however, where belief and practice could not readily be separated. If the State sought to limit the manifestation of religion in such instances, it could be seen as limiting, perhaps even threatening, the freedom of belief itself. The consequences for the interpretation of article 18 would be strong resistance by religious organizations to any restriction on manifestation that was seen to challenge belief. The Committee should make it clear that the manifestation of religious freedom could - and perhaps should - be limited, in order to protect equality. In many situations, the equal rights of men and women were seen as inconsistent with religious belief. A manifestation of religious belief that denied such rights, whether in the family or in public life, not only might be limited under article 18, paragraph 3, but probably should be so limited if the State party was to fulfil its obligations under the Covenant. In reality, however, a State was more likely to give privilege to a dominant religion than to those rights. For example, many States had made reservations to the Convention on the Elimination of All Forms of Discrimination against Women based on the ground that equal rights of men and women were inconsistent with religious laws. Therefore, greater emphasis was needed to make clear that limitation of religious manifestation might be necessary to protect those rights.

10. States were often asked to exempt religious groups from the application of general laws on the grounds that they imposed unnecessary or unreasonable limitations on religious manifestation or unduly limited freedom of conscience.

(Mrs. Evatt)

There were many examples of regulatory provisions, from those governing the slaughter of animals up to the question of equal opportunity and anti-discrimination, where exemptions had been granted in some situations. The draft general comment did not provide guidance on an approach to that issue, however. A distinction must be made between regulatory laws, where some flexibility was possible, and areas where fundamental rights and freedoms were at issue and exceptions should not be made.

11. Mr. MAVROMMATIS said that the phrase in square brackets in the sixth sentence should be retained only if it was amended along the lines suggested by Mrs. Higgins. He favoured the text proposed by Mr. Lallah, but would include a reference to the secular, since using exclusively religious criteria would render the grounds for restriction unfair.

12. Mrs. CHANET, after drawing attention to an omission in the first sentence, said that she would prefer to delete the phrase in square brackets. While favouring the text proposed by Mr. Lallah, she would be unable to approve it until the French version was produced. "Morals" and "morality" were two entirely different concepts, and she requested clarification on the meaning of the term was intended to convey.

13. Mr. PRADO VALLEJO said that he favoured the text proposed by Mr. Lallah as amended by Mrs. Higgins.

14. Mr. LALLAH agreed with Mrs. Chanet that the term "morality" did not convey the proper meaning; it should be replaced by "morals". He welcomed Mr. Herndl's suggestion that the phrase "the special character of morality" in the second sentence should be replaced by the word "principles". In response to Mr. Sadi, he had used the term "philosophy" because many religions, particularly non-theistic religions, were described as such. Therefore, he would prefer to use the wording "religious, philosophical and social traditions".

15. He agreed with Mrs. Evatt that the draft had not addressed the regulatory functions of the State. That would be difficult, however, until the Committee had gained greater practical experience in that area through reports from States parties and communications. As to her concerns about equality and non-discrimination, rights were enjoyed not through their limitation but as substantive rights. The third and eighth sentences of the draft paragraph brought in the fundamental principles of equality and non-discrimination.

16. Mr. POCAR said that he was not altogether happy with Mr. Wennergren's suggestion to break the first sentence into two, since that would appear to stress that limitations were permitted, something the Committee particularly wished to avoid. He suggested that the word "fundamental" in the second sentence could be deleted. The inference, otherwise, would be that there were two kinds of rights under the Covenant: fundamental and not fundamental. He agreed with the wording suggested by Mr. Lallah, and suggested that the words "or belief" should be deleted from the end of the text proposed by him.

17. Mr. DIMITRIJEVIĆ, summarizing the discussion thus far, said that dividing the first sentence would give the paragraph a categorical force that was not

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intended. If the sentence was read in a systematic manner, together with those that followed, the sense of the paragraph was clear. The word "fundamental", in the third sentence, should be deleted, as should the entire fourth sentence. As for the sixth sentence, the idea contained in the bracketed passage should be retained, but reworded on the lines suggested by Mrs. Higgins. In the next sentence, "should" was to be replaced by "may" in the first clause, and by "must" in the second. In the ninth sentence, the Committee had shown a preference for the version proposed by Mr. Lallah, but with the amendment of "morality" to "the concept of morals" and the corresponding rephrasing of the sentence. The final sentence could be left as it stood.

18. Mr. NDIAYE asked whether the concept of morals referred to a universal system of morals, to which everyone could adhere, or to a system of morals specially put together for a particular society. That concept of morals applied in his country, Senegal. He wondered, however, what the case would be in a State with a single religion, such as Islam: on what basis would the concept of morals be defined?

19. Mr. LALLAH said that the sentence had been drafted in response to objections to the effect that the concept of morals should not be based on religion. As other members had pointed out, the concept of morals was specifically secular, yet there was also a need to take into account divergencies in different States.

20. Mrs. HIGGINS said that she viewed the issue slightly differently and that the Committee should avoid stating that morality was a secular concept, in order to accommodate a diversity of views. In response to Mr. Ndiaye, she said that the Committee wished to state that a limitation which would impact differently on people of different religious persuasions should not be based exclusively on a single religion.

21. The CHAIRMAN proposed that the fourth sentence should be deleted and that the sixth sentence should be reworded to read: "The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there even if they would be allowed as restrictions to other rights provided in the Covenant, such as national security." The penultimate sentence would be replaced by the text suggested by Mr. Lallah, amended to read as follows: "The Committee observes that the concept of morals derives from many social, philosophical and religious traditions. Consequently, limitations on the freedom to manifest a religion or a belief for the purpose of protecting morality must be based on principles not deriving exclusively from a single tradition".

22. It was so decided.

23. Mr. DIMITRIJEVIĆ suggested, in the interests of avoiding a lengthy debate, that paragraph 10 should be deleted save for the last sentence, which could be appended to paragraph 9.

24. Mrs. HIGGINS agreed with that suggestion but said that the wording of the last sentence should be improved.

25. Mr. DIMITRIJEVIĆ proposed that the sentence should be amended to read as follows: "Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their right to manifest religion or belief to the fullest extent compatible with the specific nature of the constraint".

26. It was so decided.

27. Paragraph 9, as amended, was adopted and paragraph 10 was deleted.

Paragraphs 11 to 13

28. Mr. DIMITRIJEVIĆ, turning to the last three bracketed paragraphs of the original draft, said that the Committee must decide at the outset if the central issues they dealt with, namely state religion (para. 11), state ideology (para. 12) and conscientious objection (para. 13) should be addressed at all. If paragraphs 11 and 12 were retained, it might be advisable to add an introductory phrase such as "In those States in which they exist", so as not to seem to encourage the adoption of a state religion or ideology.

29. Mrs. HIGGINS observed that the substance of the Committee's attitude towards state religion - that it was acceptable provided there was freedom for dissenters - had been expressed in earlier paragraphs of the draft comment, so that paragraph 11 was not needed.

30. Mr. POCAR observed that the first part of paragraph 11 dealt with state religion but that the second part dealt with the Committee's wish to be informed of measures that did not refer only to state religion. If paragraph 11 was deleted, the second element might be shifted to an earlier paragraph, such as paragraph 2.

31. Mr. EL-SHAFEI said that paragraph 11 was useful, if only to round out the earlier reference in former paragraph 8 to an aspect of state religion. The treatment of minority religions always came up as a question put to States parties during the consideration of reports.

32. Mr. LALLAH said that he thought paragraph 11 should be retained.

33. Mr. DIMITRIJEVIĆ said that there was merit in retaining all but the first sentence of the paragraph; it had been established elsewhere that a state religion did not of itself contravene either the freedom of religion or the prohibition of discrimination on the basis of religion or belief. The remainder of the paragraph, however, was useful with regard not only to the reporting duties of States but as a statement on the treatment of minority religions in a situation where there was a majority religion.

34. Mrs. EVATT agreed that paragraph 11 was useful as a general statement on a situation where there was a dominant religion.

35. Mr. POCAR said that he agreed with Mr. Dimitrijević that the point at issue was not state religion but dominant religions, which included state religions.

36. Mr. SADI, supported by Mr. PRADO VALLEJO, said that he saw a big difference between dominant religion and state religion, and that the two did not necessarily overlap. Both needed to be addressed.

37. Mrs. HIGGINS said that the issue needed more thought. In the United Kingdom, for instance, there was an established religion that was not remotely dominant in any practical sense.

38. Referring to paragraph 12 on state ideology, she said that it seemed unnecessary. Mr. EL-SHAFEI, Mr. LALLAH and Mrs. EVATT agreed with Mrs. Higgins regarding paragraph 12.

39. Mr. NDIAYE said that he did not think it wise to delete paragraph 12. There were many problems emerging on the international scene that were attributable to state ideologies, and he believed the Committee should take a position on the issue at an early stage.

40. Mr. ANDO, speaking in his personal capacity, said that further thought could be given to retention of article 12.

41. Mr. DIMITRIJEVIĆ observed that to retain the article would be in keeping with the Committee's wish to deal with more than strictly religious issues. The first sentence might be rephrased as a reference simply to the reality of state ideology, rather than as a seeming endorsement of its acceptability.

42. Mrs. HIGGINS, referring to paragraph 13, said that the Committee should definitely deal with conscientious objection, an issue that was the subject of numerous communications under the Optional Protocol and from non-governmental organizations. It would, however, be useful if the secretariat could identify all communications based on that issue and the corresponding views of the Committee.

43. Mr. POCAR and Mr. LALLAH agreed that paragraph 13 should be retained and reformulated on the basis of the Committee's jurisprudence.

44. Mr. EL-SHAFEI said that paragraph 13 should remain, but needed revision.

45. Mr. DIMITRIJEVIĆ agreed that the text of paragraph 13 should be retained as a basis for discussion, subject to perusal of the Committee's jurisprudence. He pointed out, however, that its jurisprudence had never touched on the right of conscientious objection per se but rather on situations in which laws guaranteeing the right had been misapplied and the right had been violated.

46. Mrs. EVATT said that the issue itself of conscientious objection should be dealt with in paragraph 13.

47. Mr. DIMITRIJEVIĆ, summing up the general consensus, said, with regard to paragraph 11, that a way should be found to keep the relevant parts referring to a dominant or established state religion so as to deal with the issue of majority/minority religion. Further thought should be given to some treatment of state ideology in paragraph 12. With regard to paragraph 13, he asked members to suggest issues that they thought fell within its scope so that the Working Group on Article 40 of the Covenant could work further on the matter.

48. The CHAIRMAN said that the Committee had concluded its consideration of the draft comment on article 18 for the current session.

The meeting rose at 12.25 p.m.